CROSS RIVER STATE

BUREAU OF PUBLIC PRIVATE PARTNERSHIP

POLICY AND GUIDELINES

Produced by
CROSS RIVER STATE BUREAU OF
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ACRONYMS AND GLOSSARY OF TERMS

BOO	Build Own Operate
BOT	Build Operate and Transfer
EoDB	Ease of Doing Business
EOI	Expression of Interest
ExCo	Executive Council
ESIA	Environmental and Social Impact Assessments
FBC	Full Business Case
FDI	Foreign Direct Investment
ITM	Instruction to Bidders
CRSIPA	Cross River Investment Promotion Agency
CRSPPA	Cross River Public Procurement Agency
CRSG	Cross River State Government
MDAs	Ministry, Department and Agencies
MoF	Ministry of Finance
MTEF	Medium Term Expenditure Framework
NPV	Net Present Value
OBC	Outline Business Case
O&M	Operations & Maintenance
PDT	Project Delivery Team
PIM	Project Information Memorandum
PPP	Public - Private Partnership
PSC	Public Sector Comparator
P&BC	Planning & Budget Commission
RFP	Request for Proposal
SDP	State Development Plan
SIP	Sector Implementation Plan
SPV	Special Vehicle Funding
VfM	Value for Money
VGF	Viability Gap Funding

ACKNOWLEDGEMENT

The Cross River State Public-Private Partnership (PPP) Policy is a comprehensive guide for advancing investment initiatives by leveraging private financing through PPP models. This policy aims to equip public and private entities for the meticulous planning and successful execution of projects within the PPP framework.

CRS Bureau of Investment Promotion

1.0

PUBLIC-PRIVATE PARTNERSHIP

1.0 Public-Private Partnership

1.1 Introduction

Public – Private Partnerships (PPPs) represent contractual agreements in which the private sector collaborates with public authorities to administer public services and/ or create, fund, and operate infrastructure projects. The goal of such collaborations is to elevate efficiency, expand access, and enhance the quality of public amenities. Given that infrastructural elements like transport, energy, water, sanitation, agricultural facilities, and communication networks require substantial capital investment, they often put a financial burden on public budgets, particularly in developing nations with constrained resources. Consequently, authorities in these countries continually seek alternative financing avenues, and private sector investment through PPPs has emerged as a viable solution. For many years, governments have successfully employed PPP frameworks to improve infrastructural access for both citizens and the broader economy.

1.2 Objectives of a PPP

The objectives of PPP arrangements are to:

- Increase the availability of infrastructure services;
- Improve the efficiency in the delivery of infrastructure and services;
- Improve access to private sector financial resources;
- Benefit from private sector technical expertise, experience, and efficiency; and
- Transfer project-related risks to the private sector.

1.3 Roles of Public and Private Sector

PPPs are designed in a way that enables both public and private entities to assume distinct roles and capitalize on unique advantages while executing specific responsibilities. In these partnerships, the government typically focuses on project planning and structuring, which could involve direct financial investment, asset transfers, or other in-kind contributions to bolster the collaborative effort. Additionally, the government brings to the table its capacity for social responsibility, environmental stewardship, regulatory oversight, and the mobilization of political backing. Once the project is operational, the public sector continues to play a vital role by overseeing the private partner's performance and ensuring compliance with contractual terms.

Conversely, the private sector leverages its skills in business management, operational efficiency, and innovation to execute the project adeptly. The private sector bears a substantial share of the project risks and, in many instances, provides a large part of the needed capital investment. In essence, the private sector is tasked with the project's actual implementation and operation.

1.4 Value-for-money

The concept of Best Value for Money (VfM) in either public service delivery or public procurement is rooted in the evaluation of which alternative or proposal offers the most advantageous balance of net benefits to overall costs. This evaluation permits a comparative analysis of various methods for achieving project goals, considering their prospective economic and social repercussions in relation to their expected expenses. This evaluation criterion is especially pivotal in PPPs, as different approaches or proposals could lead to varying levels of risk and quality of results.

Unlike traditional procurement methods, which often prioritize the lowest cost bid under the assumption that all bids yield similar outcomes, VfM takes into account a broader range of factors, including quality and risk. Deciding between a PPP and traditional procurement model should thus hinge on a comprehensive VfM assessment to identify which approach is most likely to deliver superior results.

2.0
PPP
PROCESS

2.0 The PPP Process

2.1 Government Capacity

The public sector's thorough comprehension of project specifics is crucial for the correct identification and distribution of risks among the contractual parties. While the Cross River State Government (CRSG) may enlist external advisers for expert counsel at various stages of project execution, it's important to note that several tasks are not suitable for outsourcing. Additionally, the government may not possess the in-house expertise needed to manage intricate PPP arrangements or the dedicated workforce to tackle the labor-intensive work involved in initial project structuring.

Consequently, the CRSG may find it necessary to either recruit specialized staff or invest in targeted training for current employees to competently oversee PPP procurement and day-to-day operations.

2.2 Institutional Development

The triumph or downfall of Public-Private Partnerships (PPPs) is frequently linked to the initial architecture of their governing policies, legal frameworks, and guiding principles. In nations where PPPs have been effectively deployed, there typically exists a comprehensive policy infrastructure that clearly outlines the government's intentions regarding PPP engagements. This policy backbone is often complemented by specific PPP legislation, which delineates the sectors eligible for private sector involvement, outlines the procedure for awarding PPP contracts in accordance with Cross River Public Procurement Law, and establishes a governance structure for operational PPPs.

Beyond these foundational elements, supplementary guidelines and additional institutional frameworks are usually essential for further clarifying the roles and responsibilities of all parties involved in the PPP. These can serve as detailed roadmaps that guide the implementation and management of PPP projects, ensuring that each stakeholder understands their obligations and the mechanisms for oversight and accountability.

2.3 Sector Planning

Prior to opting for a PPP model for any given infrastructure project, the Cross River State Government (CRSG) first needs to define its overarching objectives within the specific sector. A comprehensive sectoral plan serves as the roadmap for achieving broader infrastructure goals. Only after this plan is in place can CRSG assess whether a PPP model would be the most effective means for realizing specific elements of the sector's larger objectives.

Project development within the realm of PPPs is typically spearheaded by various Ministries, Departments, and Agencies (MDAs), each operating within its own functional and geographical scope. These MDAs conceptualize the project and then submit it to the Bureau of Public Private Partnership (BPPP) for preliminary studies and further development. A series of approvals and reviews follow this, eventually integrating the project into the PPP Project Pipeline and the Cross River State Infrastructure Master Plan. Gaining entry into the Master Plan necessitates approval

from State Planning Commission, State Executive Council and House of Assembly, emphasizing the critical importance of establishing a project's viability prior to launching into the PPP procurement process. This ensures a professionally managed procurement journey, comprehensive governmental oversight throughout the PPP lifecycle, and a regulated framework for any

fund transfers related to the project—be they outgoing subsidies or incoming royalties. A pivotal initial step involves securing the necessary funding to fulfill all government responsibilities, which must be obtained from the relevant budget and planning entities.

The State Planning Commission and Bureau of Public Private Partnership hold the responsibility for prioritizing infrastructure projects, and collaborating closely with the pertinent Ministry, Department, or Agency (MDA) within the government. The first order of business for the MDA is to create a PPP project concept for approval by BPPP. This concept is generally rooted in a Pre-Feasibility Study or an Outline Business Case (OBC). Once approved, the project gains inclusion in the Master Plan, which outlines the Comprehensive Cross River State Development Goals (CCSDG) infrastructure investment strategy, encompassing all procurement methods, including those projects partially or fully funded through the State Budget.

2.4 Selecting a PPP Model

The selection of an appropriate PPP model, depending upon the characteristics of the project, is the key to ensuring successful implementation of a project through the PPP route. The main distinction between the various PPP models is the level and nature of risk shifted from the public sector to the private sector. In addition, a major consideration is the ability of the Government to provide the required capital investment and/or operational expertise required.

Strategic Needs Assessment
A compelling case outlining the project's strategic necessity in terms of its goals, scope, and deliverables is essential. This entails revisiting any pre-existing Strategic Needs Assessment studies, if available, and evaluating the project's alignment with the objectives of the relevant Ministry, Department, or Agency (MDA). Since the project should already be a component of the Infrastructure Master Plan, it should also be consistent with overarching sector development strategies. Additionally, it's crucial to address the question of why the project is timely—why it needs to happen now.

The Strategic Needs Assessment should encompass several key facets:

- ✓ The role of the project in fulfilling the objectives of the Comprehensive Cross River State Development Goals (CCSDG);
- ✓ The capability and capacity of BPPP and the concerned MDA to execute the project;
- ✓ The relative need for the project, along with its estimated budget or capital expenditure;
- ✓ Specified deliverables, incorporating any essential service or technical standards and performance criteria;
- ✓ The private sector's ability to deliver the services in question;
- ✓ Desired outcomes and broader impacts the project is expected to generate within its service domain; and
- ✓ Any additional primary motivators that substantiate the need for project development.

2.5 Project Development

As the project is being prepared, the government's foremost concern should be the assessment of vital financial parameters, with the project's bankability being of utmost importance. Should initial assessments indicate that the project may not be financially viable under a PPP framework, government authorities may consider involving an external organization like a multilateral agency to enhance the project's creditworthiness. Enhancing a project's bankability may necessitate improvements to the overarching regulatory landscape, such as tariff or regulatory adjustments. Financial modeling around royalty or viability gap funding (VGF) and availability payments to or from the government might also be required. Concurrently, prospective private partners must ensure adequate access to equity funding and various forms of debt financing, such as bank loans or bonds.

2.6 Project Procurement

Competitive Tender Process
PPP projects should consistently be subject to a competitive bidding process to ensure transparency and to identify the most valuable proposal. Many international financial institutions and grant-providing organizations stipulate the necessity of a competitive bidding process as a prerequisite for their backing. Sound procurement procedures for PPPs thus lay the groundwork for achieving the intended project benefits and optimal Value for Money (VfM).

Due to their intricate nature and potential for monopoly, PPP projects generally necessitate a more extended, two-stage competitive procurement process compared to traditional methods. This longer timeframe allows bidders to gain a more in-depth understanding of the project. While the complexity of PPP projects often results in higher bidding costs, this isn't necessarily a drawback. Elevated costs can serve as a natural filter, eliminating smaller players who might lack the resources or expertise to effectively implement the project.

The crux of successful procurement lies in the strict and transparent adherence to procurement rules by the government. This should be complemented by thorough planning and adequate governmental capacity to manage the tendering process proficiently. Where needed, the inclusion of external transaction advisors can add an additional layer of scrutiny and expertise to the process.

Unsolicited Bids
Handling unsolicited bids presents a delicate balancing act for the government. On one hand, the government seeks to foster innovation by encouraging the private sector to propose unique infrastructure development or rehabilitation solutions. On the other hand, it must safeguard against potential exploitation that could arise from the absence of a competitive bidding process.

While some countries allow unsolicited PPP bids without a competitive process, many international financial institutions are hesitant to provide support in such cases. This reluctance often stems from a policy against financing projects awarded to sole bidders. Historically, PPP projects granted without competitive bidding have a suboptimal track record, often failing due to unsustainable costs. Excessive tolls or service charges can lead to civil unrest and might necessitate costly public sector intervention.

Some countries have found a middle ground by opening unsolicited bids to a competitive process, albeit with the original bidder's knowledge. To stimulate innovation, the government can offer incentives, giving the unsolicited bidder a preferential advantage during the evaluation phase, thereby making their proposal more competitive relative to other bids.

To reconcile these concerns, the government plans to welcome unsolicited bids but will subject them to a transparent, competitive bidding process. This approach will be overseen by BPPP and the relevant Ministry, Department, or Agency (MDA), ensuring both innovation and accountability.

2.7 Project Implementation

In the realm of project financing, a pivotal moment occurs when debt and equity funds are disbursed to the Public-Private Partnership (PPP) entity. These funds are essential for covering the costs of construction, or for the upkeep and restoration of existing facilities. Meeting the planned budget, timelines, and project specifications is crucial at this stage. Any cost overruns can pose a significant risk, as additional funding might not be readily available. Similarly, delays can escalate loan repayment costs, particularly if the project isn't yet generating revenue. To mitigate these risks, the construction contract will specify a set price and firm completion date.

Once construction is complete and the project is operationally ready, the commissioning phase becomes critical. At this point, the government verifies that the project is ready for operation, allowing the PPP entity to start billing customers for services rendered. Lenders gain confidence in loan repayment prospects once operational revenues begin to flow. Equity investors also benefit as the project's demand trends become more apparent, enabling a more precise valuation of the PPP entity or Special Purpose Vehicle (SPV). Additionally, this phase may allow for income to equity holders through mezzanine finance or quasi-equity loans, as dividends usually become payable only in later stages when there's sufficient net cash flow. Successfully commissioning the project also eliminates one of the primary risks—completion risk.

2.8 Project Maturity

The revenues generated should cover the project running costs and be used to repay the financing and pay dividends to shareholders. During this operating phase, the true value of the project is understood, and equity holders will be able to receive real returns. At this operating stage, PPP projects may have also initiated other forms of financial arrangements, such as issuing bonds or listing projects on exchanges, and project equity can be more easily sold to investors who may have had less appetite for the early-stage project completion risks. In the final stages of the operating phase, or the maturity phase, the asset is managed and continuously maintained to ensure that the assets meet minimum quality standards, which are checked by an assets survey approximately 12 to 18 months prior to the maturity of the concession. Any deficiencies revealed by the survey must be rectified within a given period by and at the cost of the SPV.

3.0

OVERVIEW OF PPPP

DELIVERY MODELS

3.0 Overview of PPP Delivery Models

There are several types of PPPs models depending on the stakeholders involved, their ownership arrangements, and allocations of risk between the private and public partners. The choice of a PPP model depends on the objectives of the government (e.g. improving service efficiency, transferring investment risk, maintaining service control).

Contract Type (Duration)	**Characteristics**				**Service & Payment to Private Sector Contractor**
Service Contract (1-3 years)	Public	Public and Private	Public	Public	A definitive, often technical service fee paid by government to private sector for specific services.
Management Contract (3-8 years)	Public	Private	Public	Public	Private sector manages the operation of a government service and receives fees paid directly by government.
Lease Contract (5-10 years)	Public	Private	Public	Private	Private sector manages, operates, repairs and/or maintains a public service to specified standards and outputs. Fees are charged to consumers/users and the service provider pays the government rent for the use of the facility.
Concession, BOT, BOO, etc. (10-30 years)	Private and Public	Private	Private	Private	Private sector manages, operates, repairs, maintains and/or invests in infrastructure to specified standards and outputs. Fees are charged to consumers/users. The service provider may also pay a Concession Fee to the government.

3.1 Service Contracts

Under a service contract, the government (public authority) hires a private company or entity to carry out one or more specified tasks or services for a period, typically one to three years. The public authority remains the primary provider of the infrastructure service and contracts out only portions of its operation to the private partner. The private partner must perform the service at the agreed cost and must typically meet performance standards set by the public sector.

Under a service contract, the government pays the private partner a predetermined fee for the service. Often there may be some financial incentives in the contract to reduce operating costs

and/or improve operating performance. The government is responsible for funding any capital investments required to expand or improve the system. One financing option involves a cost-plus-fee formula, where costs such as labour are fixed, and the service contractor receives a premium over the fixed costs for its efforts.

Advantages include:

- Relatively low-risk option for expanding the role of the private sector.
- Quick and substantial impact on system operation and efficiency.
- Means for technology transfer and development of managerial capacity.

Disadvantages include:

- Require strong enforcement of contracts and laws by public sector.
- Does not attract capital investment from the private sector.
- Private partner's incentives are limited and therefore may not encompass overall objectives.

3.2 Management Contracts

A management contract is a comprehensive service contract that covers all of the management and operational components of the public utility or service provider. Although the ultimate obligation for service provision remains with the public sector, daily management control and authority are assigned to the private partner. The private contractor is paid a predetermined rate for labour and other anticipated operating costs and, often, to provide an incentive for performance improvement, the contractor is paid an additional amount for achieving pre- specified targets. In most cases, the private partner provides some working capital, but the public sector retains the obligation for major capital investments, particularly those required to expand or substantially improve the system.

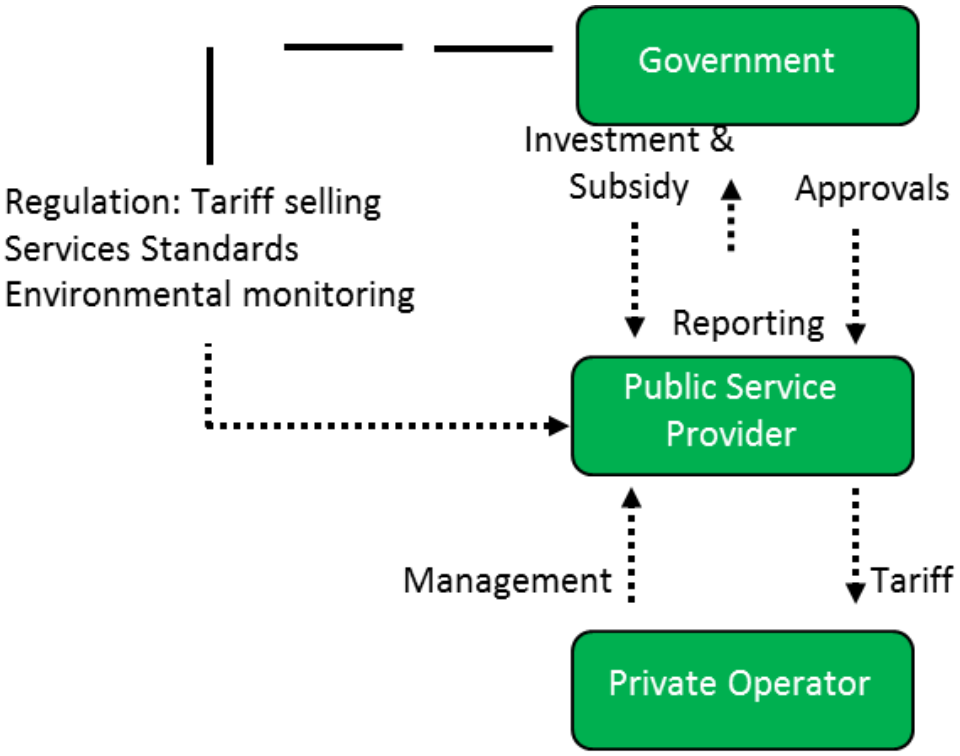
Advantages include:

- Operational gains from private sector management can be realized without transferring the assets to the private sector partner.
- Less difficult to develop and less controversial than some of the other PPP models.
- Relatively low-cost contracts requiring no major capital from private operator.

Disadvantages include:

- Private contractor does not have authority over the labour force and, as a result, deep and lasting changes are hard to achieve.
- Private contractor often has limited authority to disconnect services, raise tariffs, etc.

Figure 1: Structure for Management Contracts



3.3 Lease Contracts

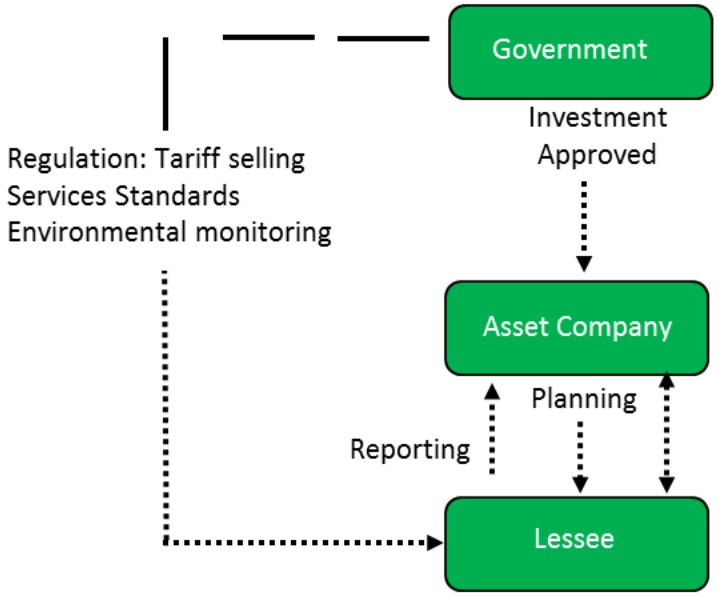
Under a lease contract, the private partner is responsible for the service in its entirety and undertakes obligations relating to quality and service standards. Except for major capital investments, which remain the responsibility of the public authority, the operator provides the service at his expense and risk. In particular, the operator is responsible for losses and for unpaid consumers' debts. Given the increased risk burden on the private sector, the duration of a leasing contract is typically longer than a service or management contract. Leases do not involve any sale of assets to the private sector, however advantages include:

- Separating the use of the facilities from the ownership of the facilities.
- Allowing private sector to make the tough management decisions (e.g. labour reductions).
- Public authority receives stable stream of cash flows without having to manage operations and maintenance of the facilities.

Disadvantages include:

- Responsibility for capital investment remains with the government and no private investment capital is mobilized.
- Private sector cannot improve physical infrastructure on its own so technical losses many not be improved much.

Figure 2: Structure of Lease Contracts

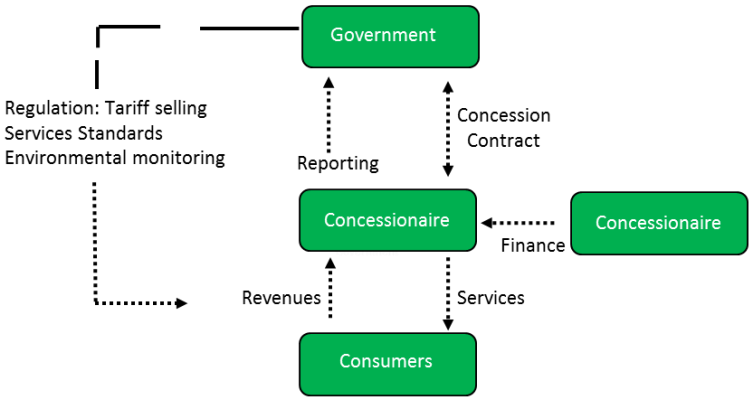


3.4 Concessions

A Concession makes the private sector operator (Concessionaire) responsible for the full delivery of services in a specified area, including construction, operation, maintenance, collection, management, and rehabilitation of the system. Although the private sector operator is responsible for providing the assets, such assets often remain publicly owned and are returned to government at the end of the Concession period. The public sector is responsible for ensuring that the Concessionaire meets performance standards and the public sector's role subsequently shifts from being the service provider to regulating the price and quality of service.

The Concessionaire collects the user fees directly from the system's customers. The tariff is typically established by a regulator, but as part of the Concession arrangement the methodology for tariff adjustments will be established in advance. The Concessionaire is responsible for financing capital investments and working capital out of its resources and from the tariffs paid by the system users, but in certain cases the government may choose to provide financing support (e.g. VGF) to help the Concessionaire fund its capital expenditures. Given the complexity of the arrangement and the need for long-term financing, a Concession contract is typically valid for a much longer period than a service contract, management contract, or lease agreement

Figure 3: Structure of Concessions



Build-Operate-Transfer (BOT), Build-Own-Operate (BOO), etc. are forms of specialized concessions in which a private firm or consortium finances and develops a new infrastructure project or a major component according to performance standards set by the government.

Table 2: Characteristics of Various Concessions

Nature of Contract	**Characteristics**				Financial Responsibility
	Asset ownership	Design	Build	O&M	
Design–Bid–Build	Public	Private by fee contract	Private by fee contract	Public	Public
Design–Build	Public	Private by fee contract	Private by fee contract	Public	Public
Build–Operate–Transfer (BOT)	Public	Private by fee contract	Private by fee contract	Private by fee contract	Public
Design–Build–Finance–Operate (DBFO)	Public	Private by fee contract	Private by fee contract	Private by fee contract	Public, Public/ Private or Private
Build–Own–Operate (BOO)	Private	Private by Contract	Private by Contract	Private by Contract	Private by Contract

Advantages include:

- Effective way to attract private finance for new construction or rehabilitate existing facilities.
- Initial capital construction costs may be reduced due to private sector's expertise.
- Motivates private sector to achieve improved levels of service as efficiency gains are translated into increased profits for the Concessionaire.

Disadvantages include:

- Governments may need to upgrade their regulatory capacity and performance monitoring.
- Tenders can be complex and take long, given the scale and long-term nature of the projects.
- Benefits of competition are limited to the initial bidding process as a private operator often has a monopoly of the service and contracts cannot be terminated easily.
- Given the difficulty in anticipating events over multiple decades, contracts are often renegotiated during their life.

4.0

CHARACTERISTICS OF A PPP PROJECT

4.0 Characteristics of a PPP Project

4.1 Long-Term Contracts

PPP projects requiring investment are generally long-term in nature, typically ranging from 10 to 30 years or more (note: PPP projects not requiring investment, such as management contracts, could be for shorter terms). The tenure of the contract is such that it typically covers the entire economic life of the asset to ensure that the private sector partner takes a whole life-cycle view for the development of the asset. The asset is then designed, constructed, operated, and maintained such that the whole life-cycle cost of the project is minimized, and the private sector operator ensures that the asset is well-maintained throughout its entire economic life.

4.2 Special Purpose Vehicle

Given the capital-intensive nature of PPP infrastructure projects and the risks associated with them, private sponsors of the project often form a separate independent PPP Company, often under a Special Purpose Vehicle (SPV) structure. The rationale for SPVs is that the risks associated with a project are unique to that project and therefore should be limited to that project. In addition, when a government tender goes to market, interested private sector parties often will pool skills and finances in a consortium that will form the basis of the SPV, so the implementing partners often are also unique to that project. The SPV also allows the private sector consortium to raise limited recourse funding restricted to the SPV thus protecting the parent companies from the risks of project failure.

4.3 Allocation of Risks

One key factor to achieving successful implementation of a PPP project is the optimal sharing of risks and responsibilities between the public and private sector. The guiding principle adopted in identifying and allocating responsibilities is that the party best able to manage a particular activity should be responsible for the risks associated with that activity and receive the associated rewards or losses. For example, PPP risks typically assigned to the private sector include the proper designing and construction of the assets and that financial returns are adequate to repay loans. The public sector, on the other hand, often assumes risks related to macro-economic stability (e.g. inflation) and land acquisition from public and private landowners.

4.4 Output Standards and Specifications

Output specifications form a vital part in encouraging innovation in PPP projects. Producing effective output specifications involves defining the ends without being prescriptive about the means for meeting these outputs. The public agency concerned clearly states the public service requirements for the facilities and services, while leaving room for the private sector to produce innovative, cost-effective solutions. The output specifications detail what needs to be achieved and not how it is to be achieved. In these types of PPP contractual arrangements, the public agency concerned makes payments to the private sector based on whether the outcome/output specifications have been met (e.g. a certain number of new electricity connections are made).

4.5 Performance-based Payment Mechanisms

A PPP can be structured in such a manner that the contract includes a performance-based payment mechanism, whereby the public sector only pays when services are delivered by the private sector. Moreover, the recurrent payment may depend on whether the services provided meet the specified performance standards as well. For example, it is not just expected that a new water distribution PPP project will provide customers with adequate quantity of water, but also that the potable water is above specified quality standards.

4.6 Private Financing

In a PPP structure, the responsibility of financing the project assets often rests with the private sector partner, depending on the service delivery model adopted. In the models which involve funding the project assets by the private sector, the private sector partner raises project finance through equity and/or debt finance. The project is usually owned (or leased) by one or more equity investors during the project term. Some of these shareholders may also be contractors to the project, who carry out construction, design or management of the assets. Others may be pure financial investors. Debt finance, in the form of bank loans or bonds, also can be raised to at least partially finance the construction and operation of the project.

4.7 User Fees

Unlike some forms of public infrastructure, PPP projects will often recover many of their costs from users. In these cases, the PPP Company will need to recover their investment from the project revenues, i.e. mainly user fees rather than from government directly. For example, many public, mostly government-funded, highways do not charge vehicle tolls, whereas most PPP road projects are structured as toll roads which collect revenue directly from cars and trucks.

4.8 Viability Gap Funding or Availability Payments

The PPP route will not be viable if the business case does not demonstrate that the private sector can achieve an acceptable rate of return for the risks it takes in financing the project's assets. Under such circumstances, and to cover any shortfall in income to cover total project costs, the public sector may provide a payment to part-finance the project costs, which in turn will raise the return to the private sector making the project more financially attractive.

This payment, called a Viability Gap Funding (VGF) or availability payment, is provided on the basis that the assets involved in the project which are used to provide the infrastructure services, are available 24 hours of every day for the whole year, except for periods of pre- arranged maintenance and therefore continue to pass part of the risk to the private sector, which is one of the main benefits and objectives of a PPP structure, instead of a capital grant to assist with debt coverage and/or operating costs.

A PPP is only structured to include VGF when total income does not cover total project costs to make the project financially viable and bankable and to attract private investors. Availability payments but not VGF, are also used in PPP social infrastructure or soft infrastructure projects, where the user charges are payable to the SPV or private sector services provider solely by the public sector, as part of the agreed payment mechanism for the provision of those services. In this case, the assets used to provide the services are divided into areas on the basis of importance or priority. If any of these areas are not available, then through the payment mechanism formula, the user charges that are payable by the public sector, are reduced by a percentage based on the importance or priority of the area concerned and the time that the area is unavailable, after deduction of an agreed time allowance for the SPV or service provider(s) to bring the area back to full availability.

4.9 Service Performance Standards

To ensure that the private sector concessionaire or service operator fully understands the minimum service levels that the public sector requires for the PPP project in question, it is necessary for the public sector project sponsor to describe in general details in the Request for Proposal (RFP), a full set of minimum performance standards for the requested services, covering the availability of the assets provided by the private sector concessionaire and the required minimum service levels. Detailed service performance standards are then negotiated with the selected preferred bidder, as part of the PPP concession contract negotiations. These performance standards are backed by an incentive or penalty system for rewarding or punishing the private sector operator for service levels delivered above or below the agreed performance standards. In extreme cases of continuous poor performance below the agreed performance standards, the PPP contract will be terminated, or the

Lenders Direct Agreement will come into operation. The incentive/penalty system is usually points-based, which translates into a monetary amount at agreed periods. The benefit to the public sector sponsor is that any penalties that are levied due to poor service performance, go straight to reduce the equity return thereby encouraging the private sector SPV management to take immediate corrective action.

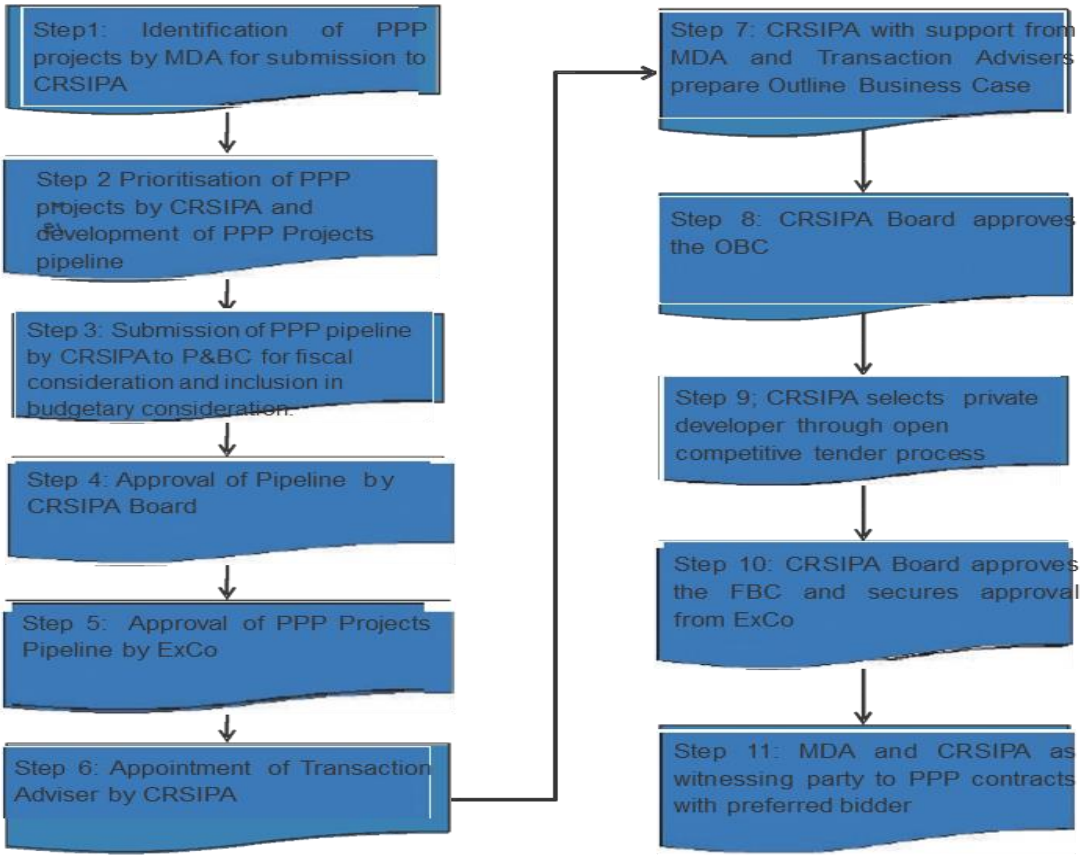
5.0

PPP

PROJECT LIFECYCLE

5.0 PPP Project Lifecycle

The process for developing, procuring, implementing a PPP consists of the following phases and steps. A brief description of the procurement and approval process for a PPP project in Cross River State is provided below.



6.0

THE OUTLINE BUSINESS CASE

6.0 THE OUTLINE BUSINESS CASE

6.1 The Rationale for an Outline Business Case

The purpose of developing an Outline Business Case is to combine all project development information, including technical, legal, social, economic, financial, and environmental aspects, into one document prior to seeking the government's approval to proceed to the procurement phase. The Outline Business Case also sets out the proposed project structure, such as a PPP, the procurement process for awarding the contract, the required resources and proposed management arrangements. The Outline Business Case is the critical document of the project preparation phase.

The completion and approval of an Outline Business Case does not often mean that all project preparation has been completed. The government may not require that an Outline Business Case contains all studies/analysis that are necessary before contract award. For example, although screening of the project's environmental and social impact will have been done for the OBC, the full Environmental and Social Impact Assessments (ESIA) may be on-going during the early stages of the procurement, and the costs of any mitigation against adverse impacts only estimated for the OBC. Similarly, more detailed ground investigations may be carried out in consultation with the bidders who will be preparing their outline designs during the bidding phase. One reason for only doing pre-feasibility studies (i.e. basic studies) at the Outline Business Case stage is that MDA's Project Development Team may not want to spend the necessary budget to complete more in-depth and costlier, feasibility studies until they know that the Outline Business Case has been approved by the government.

6.2 Developing an Outline Business Case

The Outline Business Case process involves bringing together the following information gathered during project preparation:

- Strategic Needs Assessment
- Analysis of the Service Delivery Options
- Technical analysis of options and outline design
- Preparation of a Risk Matrix which identifies all the project risks and allocates them to the party best able to handle each specific risk
- Financial modeling of the project costs and revenues, including sensitivity and value for money and affordability analyses for government, and viability for private investors, by constructing a Public Sector Comparator (PSC) where the public sector carry out the project and includes the public sector pricing and taking responsibility for all the project risks identified in the Risk Matrix. A shadow private sector PPP model is then also constructed with the risks priced and shared as set out in the Risk Matrix. The discounted Net Present Value (NPV) of the cash flows of the two models are then compared
- Economic cost benefit analysis
- Project Implementation Plan
- Compilation of the Outline Business Case Report.

6.2.1 Strategic Needs Assessment

A case for the strategic need for the project, in terms of output, scope, and objectives, must be made. This involves reviewing any previous Strategic Needs Assessment studies done (if applicable) and determining the project's ability to meet the MDA's objectives. The project should already be a component of the government's sectoral planning, and therefore should be justified in the major sector development plans. However, there is also a need to justify "why now." As part of this Strategic Needs Assessment, the key elements to be included are:

- The project's contribution to the implementation of government policy;
- The MDA's ability and capacity to develop the project;
- The relative demand for, and corresponding size of, the project in terms of its anticipated budget or capital expenditure;
- Detailing the desired outputs, including any minimum service/technical standards and performance requirements;
- The capacity of the private sector to provide the services;
- Any desired outcomes and impacts of the project (i.e. how it will provide additional benefits to the service area); and
- Any other major driving factors for the rationale of developing the project.

6.2.2 Analysis of the Service Delivery Options

As part of the Outline Business Case, the MDA should identify and evaluate the potential options for meeting their service delivery needs. The objective of this exercise is to list the alternatives and recommend the preferred option, and subsequently why the recommended option should be structured as a PPP project. However, even if a PPP is the preferred method the decision to procure as a PPP will depend on several other factors (e.g. enabling environment, private sector interest, financial analysis, etc.).

When identifying all potential options for service delivery, options to include are:

- *Non-asset solutions:* Service needs may be met without creating additional government assets, through reconfiguring the means of service delivery, developing initiatives to manage demand more effectively, or allowing the private sector to offer the service in an openly competitive market (i.e. internet, mobile phones, etc.);
- *Upgrading existing asset solutions:* Consider whether existing infrastructure held by the MDA, by another government body, or under an existing or planned PPP might be used. This may involve an expansion or refurbishment to bring the infrastructure to the required standard; or
- *New asset-based solutions:* New infrastructure may be developed to provide the required service.

Each of the service delivery options identified in the previous step should be evaluated to identify their advantages and disadvantages, such as the associated risks and benefits; the technical feasibility elements, social and environmental impacts, potential effects on government budgets and capacity, land acquisition/site issues, legislative and procurement processes, and labour and private sector capacity issues.

6.2.3 Technical Options Analysis

All major non-financial aspects of feasibility should be carefully analyzed to ensure that the project can be practically implemented from a technical perspective. Depending on the complexity of the project and the availability of experienced personnel within the public sector agency, the Project Team often will need to appoint consultants and other outside experts to undertake technical studies as part of the due diligence process. Typically, the technical Options Analysis involves three main components: A Technical (Pre) Feasibility Study, a Social and Environment Impact Assessment, and a Legal Review.

6.2.4 Technical (Pre) Feasibility Study

The Technical (Pre) Feasibility Study focuses on the engineering elements of the project. This should include:

- Field surveys of the selected project site, which may include (depending on the project) mapping, topographical and geotechnical surveys;
- Analysis of natural conditions (e.g. weather) that may impact the technical design; and
- A preliminary design of several different technical solutions that meet the preferred service delivery option.

At this stage, the technical design is not finalized and is not typically completed to the level of detail required for the final specifications. The focus here is on identifying the preferred technical solution and confirming the project's technical feasibility, determining minimum technical requirements to be specified in the procurement process, and on providing a design benchmark for estimating project costs to be used in the economic and the financial analysis.

6.2.5 Social and Environmental (Pre) Feasibility Study

Infrastructure projects often have significant social and environmental impacts arising from their construction and operation, which can be both positive and negative. Environmental impacts on the project location and in associated areas (for example downstream, ground water or ambient air) include effects on natural resources, biodiversity, and sustainability due to alterations and/or pollutants.

Social impacts on communities affected by the project may include, for example, resettlements of communities at the project site and the associated impact on quality of life and livelihoods, and impacts related to environmental alteration (for example on health and livelihoods). Given the importance of recognising and mitigating these impacts, social and environmental impact assessments are often a mandatory regulatory requirement of an infrastructure project's development process.

The scope of social and environmental studies covers the following:

- Quantifiable social and environmental costs and benefits;
- Non-quantifiable social and environmental costs and benefits;
- Options for mitigating adverse impacts and the cost of mitigation;
- Types of permits and licenses required;
- Health and safety standards;
- Any secondary effects should also be included;
- Public consultations as part of the process to ensure that the secondary effects are adequately captured; and
- Any additional environmental studies / analysis that will be required before the project is ready for procurement (often detailed studies are required for the major issues).

6.2.6 Legal Review

A comprehensive Legal Review must be done to ensure that all the foreseeable legal requirements are met for the development of the project. Although it may be costly to undertake a comprehensive review of all legislative and regulatory aspects of the project in this early phase, it is essential as a minimum to have a legal screening. Common legal issues pertain to land use rights, regulatory matters, governing legislation, tax laws, and other related matters.

6.3 Financial Due Diligence

6.3.1 Financial Feasibility

It is essential to establish the financial viability of the project through a Financial (Pre) Feasibility Study with respect to the costs involved and the revenue potential, especially if the project will be developed as a PPP as return on investment is the private sector's main motive for doing the project.

The first step is obviously to estimate the project's cost. The three broad categories of costs that need to be considered are:

- **Capital costs:** Capital costs are the costs incurred for the creation of an asset. In the case of infrastructure, this includes costs of development. These are one-time costs incurred in the process of creation of the specific infrastructure.
- **Operating costs:** Operating costs indicate the expenditure to be incurred for the routine operation and use of the infrastructure created. These would include expenditure on manpower, utility costs, and other administrative expenses.
- **Maintenance costs:** Maintenance costs include all costs of periodic and routine inspection, maintenance and repairs of the asset to ensure that it is available to the required performance standard throughout its intended lifetime.

Secondly, project revenues need to be estimated. Project revenues represent the income that is generated from the provision of services to the users. These could be in the form of user charges levied, fare or toll revenue, revenue from ancillary sources like sale of carbon credits, provision of advertising rights, etc. Project revenues may also include direct payments from the government authority in the form of VGF/availability payments.

The revenue sources for various sectors could vary from one sector to another and are often dependent on tariffs or tolls that are regulated. A key component to estimating revenues is to understand the price that can be charged, and the willingness to pay for the service. Therefore, a detailed analysis of the tariff or toll setting process is required. Furthermore, demand analysis and, in many cases, a 'willingness to pay' assessment is required following surveys of potential users. For many transport projects a traffic model will need to be made incorporating the results of comprehensive traffic surveys of journeys, alternative routes and modes, and price elasticity.

6.3.2 Financial Modeling

Therefore, the basic inputs for the financial model include:

- Project cost as derived from the detailed project report on capital costs, pre-operational expenses (to be capitalised), cost of legal approvals, etc. with the capital costs including the risk pricing in line with the Risk Matrix, using either the optimism bias or probability analysis methodologies.
- Operations and maintenance costs as derived from the demand projections and the estimated operating expenses including the risk pricing in line with the Risk Matrix, using either the optimism bias or probability analysis methodologies.
- Financial costs split between the different sources of finance i.e. equity and debt, with the equity split between real equity and long-term loans and with the debt split between loans and bond financing and between currencies if more than one currency involved. In addition, all financing fees should be included as well as all financial reserve requirements and financial ratios. The equity return used as an input should be the result of a review of other competing investment returns available in the international and local markets, including local government bonds.
- Project revenues include the revenues which have been identified from all the sources, and income from grants which may accrue to a specific project.
- Assumptions for projecting the cash flows in the future, for instance, long-term inflation rates, long-term interest rates, tax rates, etc.

The financial viability of any capital-intensive project is largely defined by the return on investment the project is expected to earn the investors (i.e. the Internal Rate of Return (IRR) of the

project). These returns are calculated on the basis of project cash flows, which are available for investors to the project (both debt and equity investors). Key statements would have to be prepared covering both the PSC and the shadow PPP models as applicable, including Projected Profit and Loss Account, Projected Balance Sheet, Projected Cash Flows, equity and debt tables, financial ratios table, a statement of the assumptions used across the financial statements and total capital expenditure and its phasing and financing, Value for Money and Affordability.

The discounted NPVs of the cash flows of the PSC and shadow PPP models adjusted for any tax paid are then compared in the value for money analysis, the lowest value being the best financing option for that specific PPP project. The discount rate is normally the government cost of funds for comparable maturities. Depending on the type of project and the source of the income, the income payable by the public sector sponsor and/or the VGF/availability payments are then reviewed to ensure that they are affordable to the public sector sponsor.

6.3.3 Financial Sensitivity

In addition, a sensitivity analysis is conducted to gauge the financial robustness of the project (i.e. to see how changes in key assumptions impact the financials of the project).

Some variables to consider are:

- Changes in construction period, phasing and project duration
- Changes in inflation rate, interest rates
- Changes in construction costs
- Changes in operating costs
- Changes in market demand
- Changes in discount rate.

In cases where the project returns are not found to be sufficient or where the sensitivity shows the project to be too risky, the possibility of obtaining government financial support (e.g., guarantees, Viability Gap Funding, etc.) may be explored.

6.3.4 Economic Cost Benefit Analysis

It is particularly important to the government policy makers that the feasibility phase should also include an Economic Cost Benefit Analysis, and correspondingly demonstrates the economic benefits of the project. The purpose of economic analysis is to determine whether there is an economic case for the investment decision. The economic assessment goes beyond the items typically included in a financial analysis and includes:

- The *economic* benefits from the project;
- The *economic* costs of the project;
- The balance of these expressed in present value terms (i.e. the net economic benefit or
- Economic Rate of Return (ERR).

Economic analysis includes project impacts that do not have a market price and positive/negative externalities that are experienced by people who are not the direct users of the project services. For example, a new coal power plant must assess such things as job creation at local mines (positive externality) and the health costs of increased air pollution (negative externality). Some elements of the Economic Cost Benefit Analysis include:

- Market valuations of the inputs (land, materials, labour, etc.) to the project, adjusted for any distortions in the market (such as taxes or subsidies).

- The valuation placed on the services by the users (i.e. the amount that the users would be willing to pay for the benefit they would receive from the service, including indirect benefits such as improved safety which cannot be directly measured). This is not necessarily the same as what they would be charged.
- Secondary or spill-over costs and benefits (i.e. externalities) that have an impact beyond the project itself.
- Looking at Value-for-Money elements of the project (e.g. if the MDA delivers the same service through conventional public procurement benchmark (Public Sector Comparator).

6.3.5 Project Implementation Plan

A Project implementation Plan is developed once all the project (pre) feasibility has been conducted to reflect the timing and the interrelationships of all the major components of the project. The purpose of the Project Implementation Plan is to provide a detailed list of the remaining studies, procurement milestones, and other task required to bring the project to fruition.

Table 3: Sample Project Implementation Plan

SN	Information to be covered in the implementation schedule	Timeline (Weeks)	Start Date	End Date	Responsibility
1	Additional studies required before				
1a	List of studies to be performed				
2	Timeline for obtaining the approvals:				
2a	First draft of tender documents and				
2b	Timetable for approval of the OBC				
3	Pre-qualification and final document				
3a	Issue Request for Qualification				
3b	Pre-qualification of bidders				
3c	Final draft of tender documents, and feedback on bid documents				
4	Application for Final Approval of the				
5	Procurement and award timeline:				
5a	Issue Request for Proposals arrange				
5b	Evaluation of bids				
5c	Negotiation and award				
6	Technical and financial closure				
6a	Detailed technical studies and				
6b	Obtaining clearances				
6c	Arranging and finalizing finance				

7	Construction timeline (for projects that involve a capital expenditure component)				
7a	Details of major milestones through the construction process				
8	Post-construction activities				
8a	Such as surveys and commissioning				
9	Expected date for commencement of				
10	Major milestones in the operating				

6.3.6 Compilation of the Outline Business Case

The outputs of the feasibility analysis are drawn together into an Outline Business Case, which provides the overall business rationale for proceeding with the PPP project (assuming the feasibility studies and other analysis supports the investment and procurement by PPP). It should provide all the information that is needed for a decision by the relevant approval authority to start a procurement process, as defined in the PPP Policy.

The Outline Business Case contains summaries of the outputs of each component of the assessments, options analysis, and feasibility studies described above. Most importantly, the Outline Business Case should answer these essential questions:

- **Why is the project needed?** – A description of the project, a definition of its services / outputs, project location, target user group, technologies to be employed, etc.
- **Why should the project be implemented as a PPP? -** Gaps identified in public sector implementation, budget and know-how constraints, market analysis that private firms would be interested in bidding, alternatives considered, financial analysis that provides evidence the project will provide an adequate financial return, any public sector support required, etc.
- **What are the expected positive benefits and negative impacts to the project? -** Social and environmental impacts of the project, their planned mitigations and possible externalities, analysis showing the economic benefits / service improvements, etc.
- **What is the implementation plan going forward and how long will it take?** A realistic project implementation schedule, identification of major project risks and their allocation between the public and private partners.
- **Who will implement the project? -** Capacity of sponsor (MDA) to implement the PPP, information on the MDA's project team and their technical advisors, the project officers and the project team, lines of decision-making within the MDA, and the technical consultants (or the process for selecting technical advisors).

The Outline Business Case can then be presented to the relevant authority for approval.

7. 0

THE PROCUREMENT PROCESS

7. 0 The Procurement Process

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7.1 Project Preparation

The project planning stage initiated by BPPP begins with the appointment of a Project Delivery Team (PDT) comprising of experienced public officials to ensure effective management of the PPP process and contracts. The PDT commences the process by:

- Conducting an initial assessment of the best methods for project identification, preparation, appraisal and approval; and
- Securing necessary preliminary approvals (e.g. initial project development funding, rights for land acquisitions, preparing for environment/social impact assessments, etc.).

At a minimum, a typical PDT should consist of the following personnel:

Project Officer
Key responsibilities of the Project Officer include:

- Manage the PPP project relationships on behalf of government
- Coordinate the appointment and management of the PPP technical advisory team
- Coordinate the PPP procurement process
- Ensure that the PPP project is affordable, provides quality service, is good Value-for-Money, and has appropriate risk transfer
- Prevent and/or resolve disputes

Accounting Officer
Key responsibilities of the Accounting Officer include:

- Provide financial oversight of the process
- Report on the financial viability of the PPP project
- Manage any capital flows to/from government

Legal Adviser

- Ensure compliance with the BPPP Law
- Provide legal and regulatory oversight
- Oversee the provision of legal documentation

Other key members

- Environmental Officer – Environmental impact and compliance
- Project Manager
- Monitoring and evaluation
- Admin staff

7.2 Appointment and Management of Transaction Advisers

Global best practice acknowledges that the public sector does not have all the skills sets required to manage a complex PPP process. The first task of the PDT is to appoint specialist advisers with skills to add value to the PPP procurement exercise and transfer skills from the advisers to in-house staff. The advisers should be selected through a two-stage competitive process with a balance in favour of experience and expertise over price and well- structured Terms of Reference.

The PDT needs to be clear what technical advice is required, over and above in-house skills, but it is preferable for the Transaction Advisers to be a consortium of advisers consisting of:

Financial Advisers: Transaction Advisory Team Leader

- financial knowledge and experience of PPP and project-finance arrangements
- understands the different risks and return appetites of different financial markets and instruments

Legal Advisers

- International and local lawyers who can work together as a team
- Experience in PPP projects and relevant contract terms
- Advise on allocation of risk and the commercial terms
- Lead negotiations with selected preferred bidder

• Technical Advisers:

- Consisting of relevant disciplines depending on the PPP transaction such as surveyors, engineers, architects, project managers, actuaries and many other technical professions

• Economist

- Conduct an economic appraisal of the project

7.3 Preparation of the Outline Business Case

An OBC or pre-feasibility study is a decision tool prepared by the PDT working with the MDA to provide the government with enough information at the early stage to decide on whether or not to proceed with the project, and if so under what strategy. The OBC should contain key documentation required for the first stage of the procurement phase such as a Project Information Memorandum) that provides the bidders with the background and objectives of the project and the Prequalification Documents). The OBC should cover:

- a description of the policy context and business need;
- Cost benefit analysis including non-quantifiable costs and benefits;
- an evaluation of the options for meeting the project objectives;
- identification of the preferred procurement route based on VfM and the feasibility or desirability of using PPP;
- analysis of the project risks and mitigation measures;
- description of the proposed risk allocation and contract terms;
- affordability and financial analyses, including a cash flow model of estimated costs and returns;
- sensitivity analysis of the key input variables to test the strength of the cash flow to meet unexpected events.

The OBC should then be submitted to the BPPP to forward State Executive Council for approval, as set out in the PPP Policy. On approval of the OBC, the PDT will procure Transaction Advisors consisting of firm or group of firms that will support the PDT to take a PPP project from the OBC through public bidding and award to actual execution. They will also prepare a Full Business Case (FBC) prior to contract award as a final check that the Preferred Bid is affordable, provides value for money, and that the project still meets its original objectives.

7.4 The Competitive Bidding Process

It is important to recognize that the benefits of competition are only realized if there is enough interest to generate multiple bidders, however. Competitive Bidding therefore requires a significantly higher level of preparation by the MDA compared to conventional procurement. One of the major differences is that PPP projects should follow a Two-Stage Process. In the first stage, applications to qualify are invited against threshold technical and financial criteria specified in an Expression of Interest (EOI) document. Any firm may respond to an open, public EOI. The best firms are then short-listed based on their technical and financial capabilities, but not on their specific vision or approach for the project. The purpose of the EOI stage is simply to determine whether an interested firm has the technical and financial capabilities to implement the project.
The best firms that exceed the EOI threshold criteria are then shortlisted and are offered the opportunity at a late date to submit detailed proposals in response to a Request for Proposal (RFP) document. Full proposals are then evaluated as per the conditions of the RFP. To manage each step correctly and allow the interested firms enough time to evaluate the project and prepare their bids, this whole process can take several months, or even up to a year to complete.

7.5 Unsolicited bids

When BPPP receives an unsolicited bid, it must first consider whether the proposal is potentially in the public interest. If it is, a request should be made for additional information from the promoter to make a full evaluation. If the project is within the public interest and BPPP decides to go ahead with the project is then included in the PPP pipeline and the updated pipeline submitted to the Planning and Budget Commission for inclusion in the Masterplan. A two-stage competitive bidding process selection procedure is then followed, with the promoter invited to take part in the selection process with a certain percentage of pre- awarded marks in the tender to encourage private sector innovation through unsolicited bids.

The Swiss Challenge System can also be adopted where, like the bonus system, it allows third parties to make better offers for the unsolicited project during a designated period. This process will avoid exaggerated project development costs. Then accordingly, the original promoter gets the right to counter-match any superior offers given by the third party. If, however, the project involves the promoter's intellectual property, trade secrets or other exclusive rights, a full selection procedure does not need to be followed and direct negotiations adopted.

Figure 5: Steps of a Two Stage Bidding Process

Step 1: Formation of the Tender Committee

The Tender Committee is responsible for overseeing and conducting the bidding process. It should consist of representatives from the BPPP and MDAs responsible for the financial, legal and operational aspects of the project as well as the Cross River State Due Process Agency (CRSDPA). This should ensure diversity, preventing one government agency from solely selecting the preferred bidder. The Committee works with the Transaction Advisor to manage the day-to -day aspects of the bidding process. However, the Committee itself (and not the Transaction Advisor) is responsible for making the final determination of the preferred bidder.

The Committee, in turn, could be divided into functional teams to focus on evaluation of specific aspects of the bidders' proposals. For example, the technical review, legal review, local preference review and financial review. The number of teams may depend upon the complexity of the project evaluation.

Step 2: Selection of Procurement Method

The selection method for the technical evaluation and the financial bid criteria for scoring must be agreed at the onset of the procurement programme.

Technical Evaluation:
There are several methods for determining the winner bidder. Some of the more common are below:

Quality Cost Based Selection (QCBS):

QCBS is used where the developer/operator is responsible for detailed designing of the facilities; there is flexibility available to introduce innovation and design efficiencies, and both quality and cost are important. Technical Proposals shall be allotted a specified weight and the Financial/Price Proposal shall carry the residual weight. The actual selection of weights shall be made based on the specific requirements of the PPP project.
Total Bid Score = X * (Technical Score/100) + Y * (Financial Score/100)
(Note: X + Y = 1.00)

Least Cost Selection
Least cost selection determines the winner based only on the financial proposals of all bidders who qualify on technical criteria. The bidder quoting the most advantageous economically financial offer to government is then selected as the preferred bidder.

Financial Bid Criteria for Scoring
The financial selection criteria for a PPP project may be one, or a combination of, the following:

- Most economic contract value;
- Lowest bid in terms of the present value of user fees;
- Highest revenue share to the government;
- Highest upfront fee;
- Shortest concession period;
- Lowest present value of the VGF/availability payments or capital grant;
- Lowest capital cost and/or O&M costs;
- Lowest equity return;
- Lowest net value of payments required from the government.

Step 3: Drafting the Bid Documents
The Tender Committee with support from the Transaction Adviser should prepare the Bid Documents prior to going public. The main bid documents are the Expression of Interest and the Request for Proposals

The Expression of Interest Advertisement
The Expression of Interest (EOI) advertisement should consist of:

- Description of key project details including,
  - Project scope and objectives, with a focus on the services to be provided including performance levels
  - Envisaged PPP model and financing mechanism
  - Envisaged payment mechanism
  - Project timeframe and indicative implementation schedule.
- Details of the qualification requirements and bidding process, including,
  - Qualifying criteria for the evaluation and selection of shortlisted bidders

Details of the pre-submission conference or meeting and of other opportunities to ask questions or seek clarification

- Process for submitting responses and evaluation
- Specific legal requirements or restrictions associated with the EOI or the project, and
- Submission Deadline.

The qualifying criteria used to evaluate the responses to the EOI should be based on the project requirements, related to a scoring system, and clearly stated in the EOI itself.

Qualifying criteria may include:

- Technical qualifications
  - Experience with similar projects, in terms of service outputs, size, and complexity
  - Experience with PPPs in similar projects, and generally
  - Relevant experience locally and internationally
  - Specific technical capabilities of the firm or consortium
  - Experience of working together (if firms are forming a consortium).
- Financial qualifications
  - Ability to raised enough funding for the project and in the form required
  - Consortium structure, including minimum equity contribution of lead firm and evidence of binding agreement among the members
- Evidence of no conflict of interest
- The EOI may also request brief comments on the project scope and structure to evaluate the firm's or consortium's understanding of the service output requirements.

Request for Proposal (RFP)

The bidding process should aim to minimize the complexity, duration and costs of participation to all parties, while facilitating enough competition to obtain the best Value-for- Money for the government. The PDT, with the assistance of the Transaction Advisor initiates the process of drafting the full tender Bid Documents (i.e. the Instructions to Bidders, Request for Proposals (RFP) and Concession Agreement (CA), etc.). These are the most important documents in the bidding process. The RFP and CA specify the main terms of the project which are non-negotiable at the award stage. It is therefore important that these terms are clear and well understood by all parties. The CA also lays the foundation for the contract management process throughout the life of the PPP. Even if the full RFP package is ready to issue at the time of short listing and the project is relatively straightforward, there will usually still be a significant time period (e.g. minimum 90 days) for shortlisted firms to review the RFP, further evaluate the project opportunity, and prepare their full bid. The Tender Committee issues the Bid Documents to the shortlisted bidders.

In addition, this step includes establishing evaluation criteria, bid submission formats, output specifications, payment mechanisms, minimum performance standards requirements, etc.

To eliminate possible conflicts of interest, the PDT will also need to constitute an independent Tender Evaluation Committee to select pre-qualified bidders once the EOI forms have been submitted.

The three parts of the RFP Document are described below:

Part I: Instructions to Bidders (ITB)
This document contains an introduction to the MDA, project scope and objective, instructions for preparing the bid document, different forms to be enclosed in the bid, timelines for the bidding process, and supporting documents to be attached for the bidding.

Part II: Project Information Memorandum (PIM)
The project information memorandum consists of project details, including:

- Population profile (i.e. density, income group, economic activities in the project area)
- Complete details of the land to be utilised with proof of ownership
- Report on any available existing assets and their potential use for the proposed infrastructure services
- Contour map of the site
- Revenue from any existing infrastructure services with assumptions on user charges
- Construction and O&M guidelines
- Environmental guidelines
- Existing contract if any for the proposed infrastructure services and any other pertinent information.

Part III: Draft Concession Agreement
The Draft Concession Agreement deals with the detailed terms and conditions on which the project is awarded and broadly covers:

- Scope of Services and Performance Standards with incentives and penalty arrangements
- Period of Contract
- Construction period
- Parameters on which contract is to be granted
- Obligations of the PPP service provider and sponsoring authority
- Process of handing over of site to PPP service provider
- Monitoring and supervision details
- Safety and environmental minimum requirements
- Support and incentives if any to be given by the sponsoring authority
- Minimum Operations & Maintenance requirements which link to the Performance Standards
- Force majeure and Termination payment arrangements
- Dispute resolution mechanism, and
- Other terms and conditions relevant to the project.

Step IV: Notice Inviting Expressions of Interest

BPPP should prepare and issue a public advertisement inviting EOIs from firms or consortia interested in providing the range of services required for the proposed project. The advertisement should be widely published in appropriate internationally circulated newspapers, journals, BPPP's and other websites, as well as official gazettes and government websites. It is preferable for EOIs to be left open for 60-90 days and never less than 60 days. The bidders are to submit their qualification credentials for the project in accordance with the EOI.

Step V: Evaluation of Applications and Short listing of Bidders

BPPP will have to establish a 7-man Evaluation Committee at the commencement of the evaluation process consisting of representatives of BPPP, the relevant MDA and any other party (as required). The applications are evaluated based on the technical and financial capabilities to implement the project as per the selection criteria given in the EOI.

The pre- qualification process is typically a much more simplified process where no project specific information is requested. A Pass/Fail approach is generally the preferred approach for evaluation where bidders must meet a threshold criterion, and all proposals that meet the criteria are shortlisted for the next stage and all non-conforming proposals are rejected. The criteria are normally based on whether an interested bidder has the sector/project experience, technical expertise, financial resources, and overall ability to implement the project if selected.

While there is no international standard for the desired number of pre-qualified bidders, typically any number between 4 bidders and 6 pre-qualified bidders is seen as a robust set. If the number of prequalified bidders is low (e.g. < 4 bidders), then there will not be enough competition and an opportunity for collusion. If the number is high (e.g. > 6 bidders), which will mean overcrowding, then the prequalified bidders will not believe they have a probability of winning the tender and therefore will not bid.

Step VI: Issuance of RFP

The RFP documents as described above are issued to the shortlisted bidders together with a list of the shortlisted bidders to ensure transparency.

Step VII: Bidders' Conference and Processing of Clarifications

Once a group of bidders are pre-qualified, one or several bidders' conferences are subsequently held to provide further background to the project and answer questions from the bidders. A key element of the pre-qualification process is to make sure that all pre-qualified firms have equal access to all information (i.e. answers to any questions are provided to all bidders). A Bidders' Conference is a key element of the communication strategy that helps BPPP build substantial trust and confidence with the bidders and other stakeholders. Key elements include:

- Adequate time should be provided between the issue of RFP and the date of the Bidders' Conference and the deadline for submission of bids.
- All information, including answers to any one firm's questions, should be made available to all shortlisted bidders.
- Shortlisted firms should provide their queries in writing within a specified number of days before the Bidders' Conference.

- The Bidders' Conference should be attended by senior representatives of BPPP together with their Transaction Advisers on the project. All shortlisted firms are invited to attend.
- Further project details should be provided at the Bidders' Conference, including answers to all the queries submitted in writing, and additional questions may be entertained at the Bidders' Conference.
- The Bidders' Conference may be followed by a visit to the project site or service area arranged by the MDA.
- The discussions at the Bidders' Conference will be duly documented and all responses and clarifications must be communicated in writing to all shortlisted firms. The responses should also be published on BPPP's website.

Step 8: Selection of Preferred Bidder

The bidders should be given sufficient time to prepare and submit their technical and financial proposals according to the Instructions to Bidders within the RFP. The Evaluation Committee follows an established, detailed procedure for evaluating proposals strictly in accordance with the criteria set out in the RFP. The Technical Offer is normally evaluated by the Evaluation Committee with support from the Transaction Adviser. Financial Offers of only those bidders scoring above the technical threshold are opened. A scoring system which combines the technical score with the financial offer is then used to determine the winner of the tender.

Step 9: Approval by Board and Issue of Letter of Intent

The Evaluation Committee presents an Evaluation Reports – Technical and Financial - as per the procurement timeline to the BPPP Board for approval. The report should also confirm if the process was carried out in accordance with regulations and it was fair and transparent. The technical and the financial proposals of the preferred bidder are incorporated into the contract and the Full Business Case prepared based on the pricing and the technical information contained in the preferred bidder's bid. A Letter of Intent is then issued by BPPP in favour of the Preferred Bidder. The Letter of Intent specifies the Conditions Precedent to be completed by the Preferred Bidder. These typically include a. Checking all legal requirements of signatories, and land ownership, b. Furnishing the Performance Security if any and any other Project Development Fees payable if any and c. Formation of a SPV if required under the RFP.

Step 10: Negotiations

Before the signing of a contract with the Preferred Bidder, there are typically certain negotiations between the Evaluation Committee and the Preferred Bidder to reach consensus on the detailed terms of the contract, the allocation of risks among the parties and the deliverables of the parties under the contract. In addition, there is usually a set of Conditions Precedent that must be met for the Contract Agreement to become effective, and often these Conditions Precedent must also be negotiated. This negotiations process must be carefully planned and managed to ensure that it is fair and transparent while at the same time carried out in such a manner that the confidentiality of the negotiations is strictly maintained.

Preliminary Activity

Prior to entering into negotiations, the Evaluation Committee appoints a Negotiations Team (who are supported by the Transaction Adviser) consisting of a representative of BPPP as the team leader,

a legal adviser, the financial analyst and a technical expert from the relevant MDA, which in turn undertakes the following preliminary activities:

- Define and articulate the objective of the negotiation - The objective of the negotiation is to refine the understanding of the terms and conditions of the project and to reach a consensus on a mutually acceptable PPP agreement;
- Prepare a timeline for negotiations - This timeline includes the start and end dates of negotiation and is also structured to fall within the period of validity of the bid;
- Identify a Negotiations Team - This involves first identifying the skills set required for negotiations and then matching up qualified persons within and outside the PDT with the defined skill set. A lead negotiator should be identified;
- Develop a Negotiation Strategy - To be able to effectively negotiate, it is important for the Negotiations Team, in consultation with the PDT and Transaction Advisors, to anticipate the preferred bidder's interests and any potentially contentious issues. The Negotiations Team develops a Negotiation Strategy which considers certain predefined positions of the PDT as well as setting the minimum negotiating parameters;
- Establish initial contact with the Preferred Bidder - A formal written communication inviting the Preferred Bidder for negotiations is sent. This communication includes the administrative details such as date, time, venue and expected duration of negotiations. It also provides the Preferred Bidder with the key points of discussion, the approach proposed by the PDT and any additional information required from them. The composition of the Preferred Bidder's negotiation team is one such requirement.

Initiating Negotiations

The actual act of negotiation takes multiple interactions between the Negotiations Team and the Preferred Bidder to arrive at a set of mutually acceptable terms and conditions for the project. The key considerations during this process include:

- **Defining the Objective**: Initiating the negotiations with an opening statement on the objective of the project and how it fits into the strategic objectives of the PDT. In this first contact, a clear delineation of roles and responsibilities of each member of the respective negotiation teams is clarified so as to create an atmosphere of trust and cooperation.
- **Setting Parameters**: Predetermination and joint agreement on the agenda for negotiations meetings.
- **Documenting**: Carefully document all discussions and interactions during the meetings. The Negotiations Team must appoint an assigned drafter to track, number and date all documents being negotiated. The Negotiations Team also ensures security of documentation and limits access to documentation as required.
- **Finding Solutions**: Working towards identifying and suggesting options to resolve issues and situations of stalemate in the discussions.
- **Formal Record**: The Negotiations Team must produce minutes of the meetings and obtain the written agreement from the Preferred Bidder that the same are a true and accurate record of the negotiations held.

Formal Settlement

The formal settlement between the two parties happens after they reaching a compromise wherein both parties believe that the settlement is the best possible under the circumstances. Conditions Precedent in the PPP agreement are set that need to be resolved, failing which the Contract Agreement, when signed, would not be enforceable. During the formal settlement, the PDT should:

- Record all details of the negotiation;
- Agree on Conditions Precedent;
- Establish a preliminary schedule for signing the PPP agreement.

Once a formal settlement is reached, it is signed by all members of the Negotiations Team and the representatives of the Preferred Bidder. It is then forwarded for recommendation to the appropriate approving authority for approval and signature.

The recommendations of the Negotiations Team may be to:

- Proceed with contract award to the preferred bidder, incorporating the agreements reached during negotiations;
- Revise the negotiation objectives and hold further negotiations; or
- Terminate the negotiation and reject the preferred bidder, and subsequently open negotiations with the second highest ranked bidder.

The appropriate approving authority reviews the recommendations and then either approves the recommendation thus authorizing the MDA to proceed, or may refuse to authorize acceptance and refer the matter back to the MDA with further instructions.

Step 11: Preparation and Approval of Full Business Case

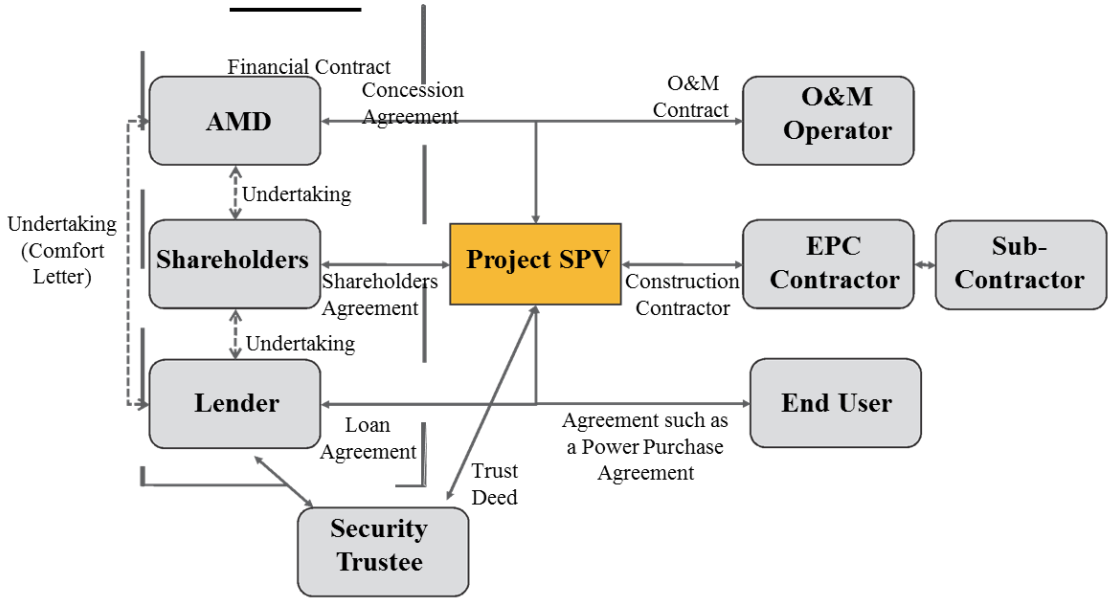
The OBC is then updated based on the pricing and other technical information contained in the preferred bid to form the FBC. The FBC is used, prior to Commercial Close and formal award of contract, to provide the government with all the information needed to support a decision to award a contract, commit any actual required funding, and determine criteria for contract oversight, monitoring and evaluation and benefits realization. The FBC is submitted to the Board and to the State Executive Council for ultimate approval. Once the FBC has been approved, the procedure to Award the Contract between the Preferred Bidder and the MDA is undertaken. There will be some Conditions Precedent (e.g. obtaining permits, finalization of the Financing Documents) before Financial Close is achieved and Contract Commencement.

There is a time limit for achieving the Conditions Precedent defined in the Concession Agreement. Investors and lenders carry out their own technical, financial, and commercial due diligence on the project to assess the risks involved in financing the project. Any subcontracts between the consortium and separate joint venture companies providing design, construction, or maintenance services are also finalised and the Special Purpose Vehicle (SPV) established. If investors and lenders are satisfied with the financial and risk elements of the project, then the Preferred Bidder can reach Financial Close and the project is ready for implementation.

Step 12: Contract Award

After finalizations of the Contract Agreement between the Negotiations Team and the Preferred Bidder and the Conditions Precedent to the signing of the Contract Agreement are met, the Agreement is signed between the MDA with BPPP as the confirming party and the Preferred Bidder. After the award of the PPP contract to the Preferred Bidder, the Preferred Bidder needs to achieve the financial closure of the project which is a condition precedent to the coming into force of the PPP contract/Concession Agreement within an agreed timeline in the Concession Agreement. While government may have a role to play in assisting with financial closure, it is primarily the responsibility of the Preferred Bidder to secure the necessary financing to begin the project. Once the Contract Agreement is signed, subject to reaching Financial Close the Preferred Bidder becomes the PPP Company or incorporates the SPV if it has not already done so (also referred to as the Project Operator or Concessionaire).

Figure 6: PPP Project Agreement Structure



8.0

CONTRACT MANAGEMENT

8.0 Contract Management

8.1 Background

Contracts define the frameworks under which parties are legally obligated to meet their respective project development and service delivery obligations. Managing PPP contracts is never simple and requires governments to maintain a balance between over and under- regulation during the term of the project contract. Over-regulation of the private party interferes with service delivery and limits innovation while under-regulation leads to increased risks of service delivery not meeting project objectives.

The approach followed in managing contracts is largely dependent on the sector in which the PPP project operates', the risk profile of the project and the phase which the contracts have reached. In projects or situations where the consequences of private party performance failure would be severe, a rigorous monitoring regime would be required based on agreed minimum service performance standards, backed up by a penalty/incentive system. In less critical circumstances, a more flexible monitoring system can be used. Similarly, a penalty mechanism might be applied with greater flexibility during the development phase compared to during the implementation phase.

Some key success factors for PPP contract management include:

- Viewing the PPP arrangement as a "partnership" between government and the private parties.
- Having a project monitoring team with the requisite skill set to effectively monitor and manage the project and the PPP relationship.
- Having well-structured contracts that explicitly detail the allocation of risks and quality of service required, with a backup incentive or penalty system for service levels above or below standard, and procedures for communication and dispute resolution.
- Establishing an effective contract management framework.
- Disputes are resolved at the appropriate level through the partnership management system without recourse to external dispute resolution.
- Changes in service delivery requirements are anticipated, and variation procedures are used to minimize any negative consequences and maximize any opportunities brought about by change.

8.2 Contract Monitoring Framework

While the private sector is responsible for the day-to-day management of a PPP project, the State Government has an important role to play in project oversight and, when necessary, enabling modifications to a project structure. Given the large number of agreements that are involved in a typical PPP project, the monitoring of the SPV's compliance will require substantial attention and resources from government. The MDA will need to set-up a Contract Monitoring Framework which covers the following major elements:

- ***Risk Mitigation***: Managing the PPP from the perspective of risk mitigation by identifying, monitoring and managing the minimization of risks when possible.

- ***Service Delivery and Performance***: Ensuring that the PPP Company is achieving required service delivery to agreed-upon performance standards.

- ***Relationship Management***: Managing the structure of authority and accountability within the PPP service delivery framework.
- ***Contract Administration***: Following administrative processes required to make sure all procedural and documentation requirement issues are followed, such as periodic reporting and service quality reviews.

8.2.1 Contract Management Plan (CMP)

Contract Management Planning should start at an early stage during the procurement process. This ensures that the contract management requirements are included in the draft Concession Agreement and other key documents. A first step in the process is to develop a Contract Management Plan (CMP).

The CMP is a strategic management tool to guide the Contract Management Project Officer and other team members throughout the PPP project's operational phase. It clarifies the key roles and responsibilities of government during project operations and identifies the resources that government will require to undertake these responsibilities.

Figure 7: Components of a Contract Management Plan

- **Tools and Processes**: The CMP should identify the necessary tools and processes that are needed to effectively manage the contract during its lifecycle. These tools and processes (e.g. accounting software, risk management framework, performance targets) should help the Contract Management Team to perform their regular day-to- day tasks efficiently and effectively. They should also specify how risks will be evaluated and risk adjustments will be made.

- **Resource Availability**: The availability of the relevant resources plays a dominant role in determining the tools and processes defined within the contract management framework. Such resources can be in three forms: Human, Financial, and Technological.

- **Timeline for Development of Tools and Processes**: The CMP should contain the timeline needed to develop and install these tools and processes within the contract management framework, subject to the availability of resources. It should also detail the regular contract compliance reform milestones and reporting requirements to government.

The exact operating procedures for contract management should be provided in a manual or other form of guidance document. This manual is:

- A repository of CMP procedures
- A contact list for key stakeholders
- A repository for key documents (e.g. Concession Agreement)
- Training guidance for newly-appointed PPP contract management staff and technical advisors.

Table 4: Sample Template for Contract Management Plan

Section	Subsection	Summary of Contents
1.Purpose and Approach	1.1 Purpose	Purpose of the PPP contract management plan
	1.2 Approach	Partnership principles Benefits to the MDA and the private party of a successful partnership
2.Strategic Objectives and	2.1 Objective	Summary of project objectives
	2.2 Key Deliverable	Summary of the output specifications and key deliverables
3.Transition Management	3.1 Transition Management	Listing of key issues in Transition Management Strategies to be adopted to overcome the issues identified
4.Relationship Management	4.1 Relationship Management	Key elements of relationship management plan defined in section on
5.Service Management	5.1 Risk Management	Key elements of risk management plan defined in section on Risk
	5.2 Performance Management	Key elements of performance management plan defined in section on
6.Contract Administration	6.1 PPP contract	Contents of PPP contract management plan defined in section on
7. Contingency Plan	7.1 Business Continuity Plan	Key elements of Business Continuity plan detailed in section on
	7.2 Step in Plan	Key elements of Step In plan detailed in section on Step in
	7.3 Default Plan	Key elements of Default plan detailed in section on Default
8. Exit Strategy	8.1 Exit Strategy	Evaluation of the options for continuing the service after termination/expiry based on the provisions of the PPP contract Outline of the procedures, roles and responsibilities and
9. Implementation Plan	9.1 Development	Table with key tasks, Target Dates, Responsibilities and
	9.2 Delivery	Table with key tasks, Target Dates, Responsibilities and
	9.3 Exit	Table with key tasks, Target Dates, Responsibilities and

Source: South Africa PPP Manual

8.2.2 Dispute Resolution and Management

Given the long-term nature of PPP projects, there is a reasonable possibility of disputes arising with regard to a party's contractual obligations and allocated risk positions. Contracts should therefore include agreed mechanisms for settling disputes. A proper dispute resolution framework should lead to a quick resolution, which in turn reduces costs to both parties and minimizes negative publicity. There are several widely used dispute resolution approaches, such as:

- Discussion between both parties;
- Fast Track resolution process;

- Dispute resolution board;
- Expert determination;
- Mediation or conciliation; or
- Arbitration
- Legal court system.

Figure 8: Dispute Resolution Escalation

The Contract Management Team should provide guidance on the following relevant dispute resolution issues:

- Preferred resolution approach;
- Project continuity during dispute resolution;
- Dispute costs allocation.

8.2.3 PPP Project Modifications

In many cases there are specific circumstances that could not be anticipated or quantified when the PPP contract was signed and could represent changes to works, services or form of delivery. PPP projects generally involve long-term contracts, and unforeseen changes can happen to the project's enabling environment (e.g. macroeconomic fluctuations, currency depreciations, natural disasters, etc.). If no variation provisions are included in the PPP contract, the contract may be too inflexible to handle these unforeseen circumstances. To avoid this pitfall, particularly in long-term projects, it is important to build-in flexibility into the PPP contract to specify the conditions in which modifications are allowed, and what the adjustment process will be.

These variation provisions should be balanced and equally benefit both the public and private sector. In addition, termination clauses should also be included to allow both parties to cancel the contract under exceptional circumstances, with fair compensation (to either party), where necessary. There are typically four categories of modifications:

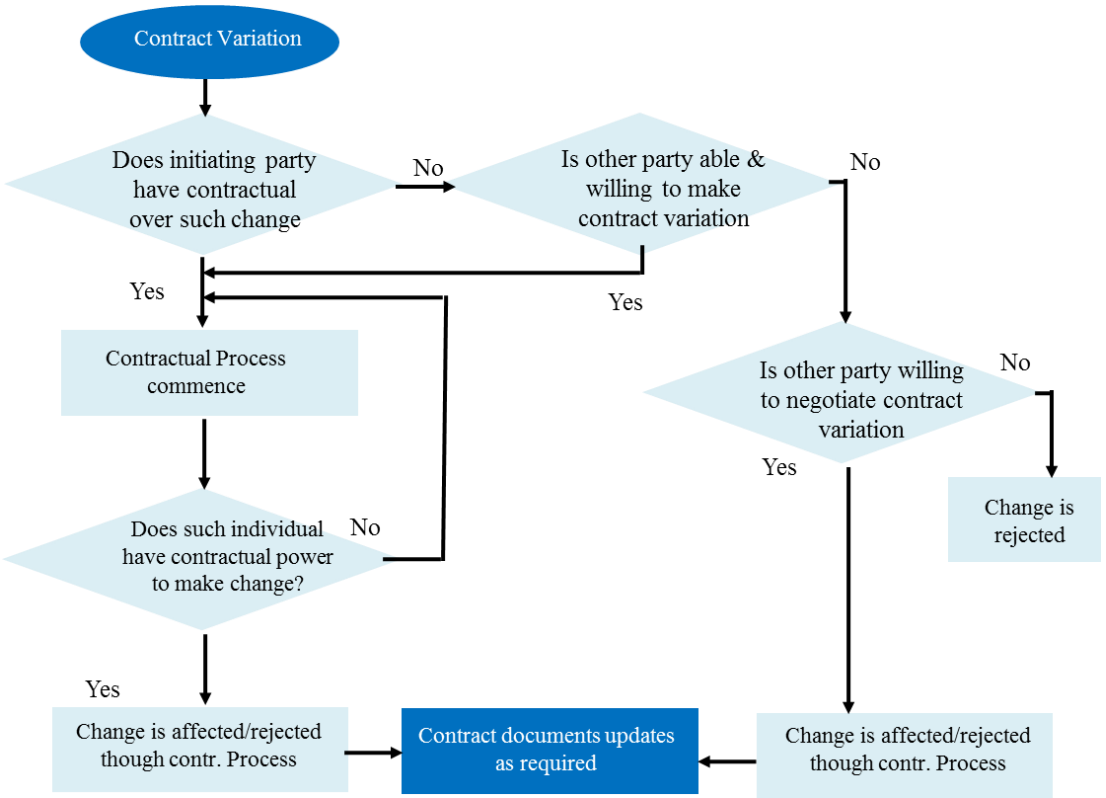
- **Modifications without Additional Costs**: The government and the PPP Company should discuss the best way of implementing the proposed change. If the modification will result in a reduction in costs to the PPP Company, then the parties will need to reach agreement about how to distribute such savings, including any potential cost reductions to the users. The two parties would be expected to agree modifications to the project financial model and to contracts without recourse to dispute resolution procedures.

- **Small Works Variations**: These types of modifications usually cover minor, unforeseen circumstances that require additional small works outside of the original contracts. Any dispute between the parties relating to small works variations must be determined in accordance with the dispute resolution procedures and are generally decided on a case-by-case basis with adjustment as necessary to the project's financial model without major modifications to existing agreements.

- **Government-request Modifications**: If government wishes to make a change to the PPP project deliverables, it must first submit this request to the PPP Company. The proposal must describe the nature of the variation and require the PPP Company to provide an assessment of the technical, financial, contractual and timetable implications of the proposed change. After reviewing, government must decide who will fund the modification (i.e. PPP Company, government, or users). If the PPP Company is adversely affected by this modification, they should be compensated in some manner and the project financial model adjusted accordingly.

- **PPP Company-request Modifications**: If the PPP Company wishes to introduce a variation it must submit a proposal to government setting out the details of the modification and the likely impact on service delivery and the PPP contract via the use of the project financial model. Government must decide whether to accept it or not and, if accepted, how to modify the funding regime that has been agreed and adjust the project financial model accordingly.

Figure 9: Contract Variation Process Flow



Source: Contract Management Guide, Partnership Victoria

8.2.4 Other Forms of PPP Contract Contingency Planning

Contingency planning is an important element of the PPP contract management process. In the event that the private party fails to deliver the services as specified under the PPP Contract, Government may have to act swiftly and should have the necessary planning in place to do so. Some types of additional contingency planning include:

- **Business Continuity and Disaster Recovery Plan**, which cover events that disrupt service delivery but do not involve default by the private party
- **Step-in Plan**, which covers events that disrupt service delivery and involve a default by the private party. If there is a lenders Direct Agreement in place, this will set out the agreed procedure to be followed. **Default Plan**, which covers private party defaults that do not result in disruption of service delivery. Government should identify all significant contingency events related to the PPP Project and develop appropriate contingency plans which should form part of the CMP.

9.0

FINANCING PUBLIC PRIVATE PARTNERSHIP

9. 0 Financing Public-Private Partnerships

9.1 Project Bankability

The term "bankability" refers to the general willingness of private sector lenders to provide financing for a PPP project. In practice, however, it is often used as a broader term to reflect the overall attractiveness of a project to equity investors as well (as they will rarely move forward without bank support). If a project is perceived to be "unbankable," then investors and lenders are unlikely to participate and as a consequence the government will not be able to move forward with the project under a PPP model.

Many factors can make a project unbankable such as a weak enabling environment, unconvincing user demand, a lack of confidence in government's long-term commitment to the project, an insufficient tariff structure, general regulatory uncertainty, poorly designed projects, and other project-level and economy-wide risks (e.g. labour unrest, currency stability, etc.). Given the variety of factors that can influence a project's perceived bankability, it is critical for governments to make the project attractive to potential lenders during the project design phase, otherwise the tendering process will be wasted as the project will be unable to reach financial closure.

Some of the major project characteristics that investors and lenders look at to determine a project's bankability include:

- **Enabling environment**: To reach an investment decision, the lenders/investors would also consider the likely changes in the regulatory and political conditions over the duration of their investment. Consistency in approach to regulation can reduce regulatory risk. They will also consider whether there are any legal constraints existing to prevent the successful implementation and operation of a PPP project.
- **Government support**: If the lenders/investors are not confident about the robustness of the project cash flows, they may require financial support from the government in the form of a capital grant, guarantee, VGF/availability payment arrangement or equity contribution to provide them with additional comfort for investing in the project.
- **Robustness of the cash flows**: The lenders/investors would primarily value the likelihood of project cash flows to service debt by looking at coverage ratios, monetary reserves and margins. The lenders/ investors may securitize these project cash flows so that they can allocate risks / returns of debt most efficiently.
- **Third-party support**: International development institutions may also provide financing for the project, through loans and equity, project guarantees, country risk guarantee, partial or full risk guarantees, etc. Currency support, in the case of swaps or other forms of financial derivatives, may also be used to reduce macro-level economic risks.

9.2 Project Funding Approaches

When a project is proposed as a PPP, the responsibility for arranging the funds for financing the project typically rests with the private bidders. In general, there are two approaches to finance a PPP project: Corporate Finance which is rarely utilised and Project Finance.

9.2.1 Corporate Finance

Corporate Finance, also sometimes referred to as Balance Sheet Finance, refers to a financial structure in which PPP project sponsors raise funding for a project from their corporate balance sheet or tie funding (at least partially) to their corporate balance sheet. The capital investment decision for the project is made at the corporate level and finance comes from the corporate coffers, either in the form of existing company funds or through outside loans/equity directly to the company.

Project funding can be structured in many ways. If the project is funded directly by the sponsor through existing resources, then it can be structured as a loan and/or equity investment from the sponsor to the PPP Company. If the project is funded by lenders, they will base their decision to finance upon the strength of the overall corporate balance sheet of the project sponsor usually secured by a corporate guarantee in addition to specific project cash flow analysis. If it is funded by investors, the sponsor company may issue stock or seek direct equity finance and investors will base their willingness to participate based on the expected increase in the corporate stock prices, the equity's liquidity, and/or other forms of equity returns. In all cases, if the PPP Company is unable to repay a loan, then the PPP Company's sponsor(s) will be held liable by the lenders.

There are certain advantages to a Corporate Finance approach for funding. If the PPP project is considered risky for lenders/investors to finance directly, the recourse to the sponsors' overall corporate balance sheet offers a higher level of security. If the sponsor is a publicly listed company, then information on its performance and viability is usually available through stock markets, rating agencies, and other market-making institutions. This combination of security, liquidity, and information availability allows debt to be issued at a lower cost than through project finance. Further, because the enterprise's overall risk is diversified over all the activities that it is engaged in, the cost of equity is also usually lower too. Therefore, the financing of a PPP project by corporate finance usually makes both the cost of debt and equity capital less expensive but exposes the sponsor companies to additional risks. This form of financing of PPP projects is the exception to the rule in international PPP projects.

9.2.2 Project Finance

A common approach to financing PPP projects is to structure the PPP Company as a Special Purpose Vehicle (SPV). The investors/lenders have rights to the cash flows of only the SPV itself and no or limited recourse to the cash flows of the project sponsor. In other words, project loans and investments are only secured by the project assets with no claim on the assets of the project sponsor. A sponsor structures projects this way to safeguard their company from the complex and ever-changing project risks.

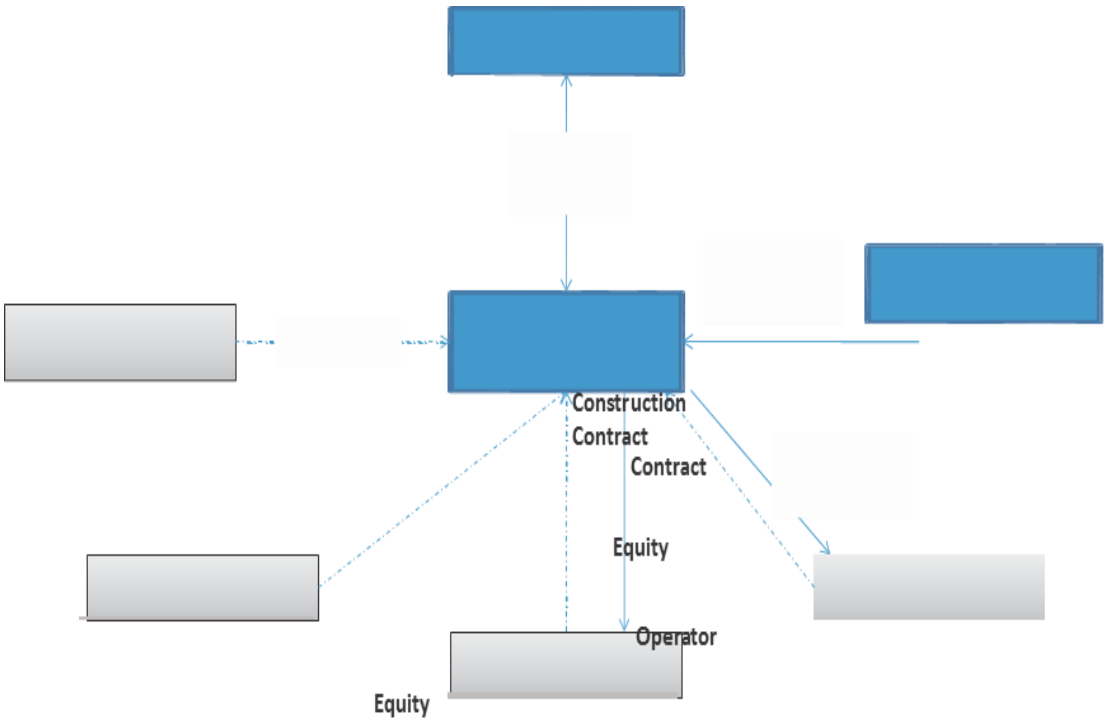
To get a project finance arrangement started, the SPV receives seed money financed with debt and/or equity from one or more sponsoring firms, recoverable as development costs from the first drawdown of the loans arranged to finance the PPP project. However, the specific assets and liabilities of the SPV do not appear on the sponsors' balance sheet and, as a result, the SPV does not have access to internally-generated cash flows of the sponsoring firm.

After the SPV receives some seed capital from its sponsors, the SPV will approach the market for additional financing. Investors and lenders are asked to only consider the bankability / financial opportunity of the particular project for which the SPV was created. As a result, all the interest, l

oan repayments, and equity returns come only from the cash flows generated from the project. The term of the investment is also limited, as the SPV is dissolved once the project is completed and the concession reaches maturity, although this may not be for up to 30 years.

Since the SPV is a standalone, legally independent company, the debt and/or equity is structured without recourse to the sponsor. This can make the cost of debt and equity higher, although it may also provide a higher risk/reward return to equity investors.

Figure 16: Project Financing Structure



9.2.3 Islamic Finance

Contractor Consortium

Operations

Islamic finance can play an important role in funding PPP projects in certain parts of the world. The rise of sovereign wealth funds, particularly from the Middle East, has created a potential source of regional financing for PPP projects. The important characteristic is that Islamic finance is consistent with the

principles of Sharia Law, which does not allow specific interest or fees (known as 'riba' or 'usury') for loans. In order for Islamic banks to make returns, the focus is therefore on the sharing of profit and loss.

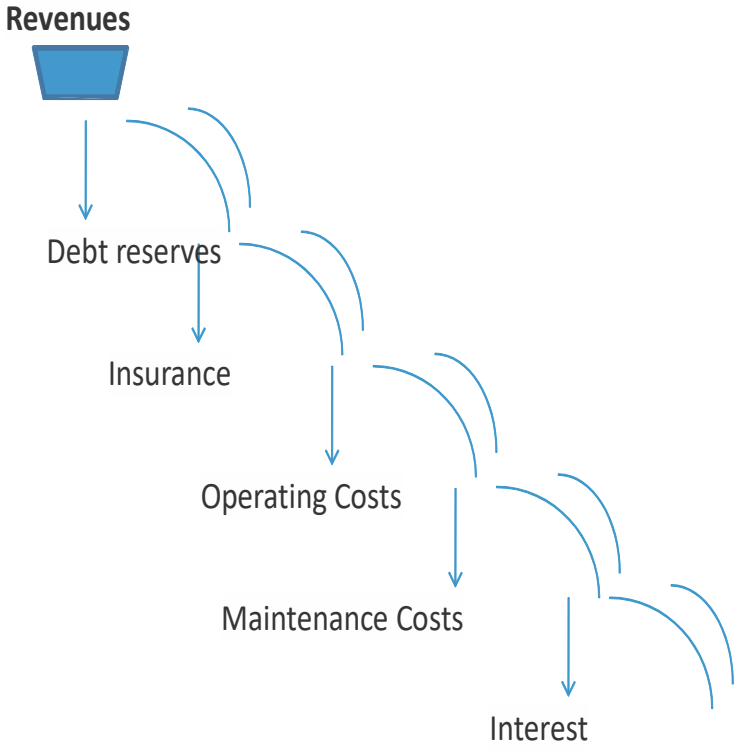
More specifically, Islamic modes of financing are classified into equity and debt. The equity instruments include mudarabah and musharakah and the debt or the fixed-income instruments include murabahah (cost-plus or mark-up sale), bai-muajjal (price-deferred sale), istisna/salam (object deferred sale or pre-paid sale) and ijarah (leasing). For example, the PPP project assets may be bought by the Islamic financial institution at a certain price, and then resold back to the PPP Company at a higher price with a payment installment plan.

9.3 Sources of Finance

PPP projects are financed using some or all of the following sources of funding:

- Equity: ownership of the project company and the associated risks and rewards;
- Senior debt/bond financing: first priority for payment and first rights over project cash flows; and
- Mezzanine funding and quasi-equity: secondary call on the project cash flows.
- Government Support: capital grants or VGF/availability payments from the government. Each type of investor or lender receives a consideration from the project by way of a return on their investment. The lenders (banks, bond holders) receive interest and the equity holders receive dividend (some projects allow for hybrid models). The key is who has priority or order for payment.

Figure 17: Cash Flow Waterfall Model



This prioritization of the cash flows is enforced using financing agreements for each source of funding for the project.

Equity

Equity is provided by 'project sponsors' (those who have an operational interest in the contract) or 'financial investors' (those who have only an investment interest). Often the private project sponsor is required by government or lending institutions to invest a certain percentage of equity capital in the PPP project. This can be done either by the private project sponsor alone or be contributed by a consortium of operational investors. The advantage of funding PPP projects through a consortium of

equity investors is that the consortium can be constituted to minimize project risks by assigning each consortium member to manage the risks that correspond to their area of functional expertise.

Equity can be raised by:

- **Internal Resources/Retained Earnings:** The parent company contributes funds out of surplus funds available in its existing business.
- **Equity Issuances**: Equity may be raised by the project sponsors separately or by a fund set up to invest in the project or by PPP Investment Funds. It can be classified as public issuance, rights issuance, or private placement.
- **Equity can also be provided in the form of Mezzanine Debt or Quasi Equity.**
  The advantage is that the interest payable can be offset against corporate tax, whereas dividends are payable from taxed earnings. In addition, interest can be earned from the start of the operating period, whereas dividends can only be paid in the later stages of the project, when net cash flow is sufficient.

Debt

Debt is defined as an amount owed to a person or organization for funds borrowed. Debt can be represented by a loan agreement, loan note, bond, mortgage or other form stating repayment terms and interest requirements. These different forms all imply intent to pay back an amount owed by a specific date, which is set forth in the repayment terms.

Debt can be raised by:

- **Bank Loans**: These represent the most common form of debt funding and can be availed in various forms with respect to the repayment facilities, tenure of the loan, interest payment options (floating or fixed), and currency denomination. Bank loans are structured on the basis of the expected project cash flows, with a moratorium or grace period, interest payment, and principal repayment schedule. Bank loans are generally fully secured and have recourse to project assets in the event of any default. Given that PPP projects are highly capital intensive in nature, they are often funded using a high proportion of debt (to reduce overall funding costs). To reduce individual exposure, banks often prefer to be part of a consortium or 'syndicate' of banks. One bank often acts as the "lead or arranging bank".
- **Bonds**: Bonds represent the debt funding raised for a project from the capital markets.
  The benefit of a bond issuance is that many different investors can be brought together, many of which only take a small piece of the project loan. Investors in a bond issue can be broadly categorised as (1) banks and financial institutions; (2) insurance companies, provident funds, and pension funds; (3) mutual funds; and (4) retail investors.
- **Multilateral Agencies**: International institutions, such as the World Bank private sector lending organisation, the International Finance Corporation, European Investment Bank, and the various regional development banks are major financiers of PPP projects globally in developing countries. While multilateral agencies follow the same debt structures as purely private lenders, they do have some unique characteristics that make them good partners for infrastructure projects. For example, multilateral agencies typically lend for long-duration projects, are focused on projects with high economic development impacts, and provide technical guidance throughout the project lifecycle. They can also take the back-end loan maturities where national and international banks will only provide short to medium term loan maturities. In addition, with the requirement of banks for higher debt: equity ratios with resultant higher equity amounts being required, they can participate in the equity of the SPV.

- **Pension Funds, Insurance Companies, Sovereign Wealth Funds, and Infrastructure Funds**: Like multilateral institutions, certain types of funding groups focus on infrastructure projects given its unique characteristics and long-term, predictable cash flows. Speciality funds, such as those that come from pensions, insurance, sovereign government's resources, and dedicated infrastructure funds, are often managed by investment banks or managers.

9.3.5 Mezzanine Funding or Quasi Equity

As mentioned above, in addition to more traditional equity and debt arrangements, infrastructure projects may wish to raise secondary or complementary funding. Mezzanine financing or quasi-equity represents a form of equity midway between senior debt and real equity and has features of both kinds of financing. It can assume the forms of subordinated loans, convertible subordinate loans, redeemable preference shares, or debt issued with stock warrants, and takes greater risks than senior debt since it is generally subordinate in terms of collateral rights over security and rights to cash flow. Such debt, at times, is usually also unsecured other than by the project cash flow in which case the rate of interest charged would be significantly higher than that charged for senior debt.

It can have one other major advantage. The interest on quasi equity can be offset against SPV corporate tax, whereas dividends are paid from post corporate tax revenue. The use of quasi equity can therefore lower the cost of equity and reduce the cost of any necessary government support.

9.3.6 Government Support

In specific cases, especially in high risk and/or high developmental impact projects, Federal or State governments might contribute funds to enhance the viability of the project. A key reason for this may be to make the project "bankable" or more viable to the private sector. Some reasons for government support may include:

- Supporting economically and socially weaker sections of society who cannot pay commercial prices for basic services;
- Encouraging the use of public amenities or environmental beneficial options like public transport systems by charging concessional prices;
- Executing their social mandate to provide certain services without charging citizens, such as senior citizens.

10.0 Project Insurance

Insurance forms an integral and key element of the overall security package for a PPP project. Insurance provides safety to the operators, lenders, equity investors, and government should a major casualty or disaster occur to all, or a material part of, the project, Insurance can vary from one project to another and from one phase of the project to another. The types of project insurance are construction and operation insurance.

11.0 Project Operation

The oversight of the project will shift from the PDT to the MDA Project Board at this stage. At the commencement of the project, if it entails construction, the MDA should appoint Independent Engineers jointly with the developer, to review and audit the construction activities.

The Independent Engineers ensure that the construction conforms with contractual commitments and notify the MDA of any deviations. After the project is constructed and begins operating, the MDA Project Board, supported by BPPP, monitors the performance of the SPV throughout the concession period. The monitoring should include:

- Service delivery by the PPP Company;
- Fulfillment of obligations to the MDA, including payment obligations, if any, by the PPP Company;
- Project monitoring and financial audit by the MDA or any other government authority.

Depending on the sector, any regulator of tariffs will also be heavily involved in the operations of the project to make sure the SPV is receiving fair revenues for the services provided. The Project Implementation stage is predominantly the responsibility of the MDA, with some oversight from BPPP with no approvals required from any other authorities.

12. Project Hand-Back/Termination

This phase marks the completion of the contract period and leads to the natural termination of the agreement. It involves the exit from the project by the PPP Company, the transfer of land and assets back to the government and the decision by the BPPP on appropriate next steps, including re-tendering the project to the private sector. However, in some cases the government through BPPP may have an option to extend the project term. Almost all PPP projects have a specified duration of the concession (usually 10-30 years), and at the expiry of the concession contract, the private sector is required to hand over the project assets to government in a good operating condition. At this time, there is a set of obligations that both the private sector and the government need to fulfill, which are usually detailed in the Concession Agreement.

The Concession Agreement should:

- Clearly specify the standard required of the assets on the handover date;
- Lay out a process for monitoring the asset standards over a period leading up to the contract end date;
- Specify financial penalties for failure to meet the required standards.

Government should aim to avoid a situation where it only discovers at the very end of the contract that the asset condition is sub-standard. Because assets can be allowed to deteriorate over a long period before the end of the contract, it is important to regularly follow the CMP and monitor the asset conditions in terms of the standard required.

The Contract Management team should also manage the handover of relevant documents and records and government should plan for the continuity of service delivery and maintenance of service standards either in the form of an extension to the contract, a new project development or through other means.

Country	Relevant Legislation Frameworks	Practice
United Kingdom	• Directive 2004/17/EC of The European Parliament • The Public Contracts	Choice between: • Price only (lowest price to the public procurer) • Price and economic benefits (value of features of the tender linked to subject matter of the contract)
South Africa	• PPP Manual (published by PPP Unit of South Africa); • Preferential Procurement Policy Framework Act 2000	Weighted average of the following factors: • Price (weight between 20% and 40%) • Technical Evaluation Score (weight between 50% and 70%) • Black Economic Empowerment Score (weight between 10% and 20%)
South Korea	• Basic Plan for Private Participation in Infrastructure 2007	Weighted average of the following factors: • Engineering Factor- focusing on the content, plans and drawings (weight of 50%) • Price Factor- Net Present Value of all payments to be made by the public entity (weight of 50%)
Australia	• Practitioners' Guide- National PPP Guidelines	Combination of the following: • Highest savings as compared to Public Sector Comparator (Bidder ranked accordingly) • Qualitative assessment of individual bids

For more information on Sector Specific PPP Toolkits, please see the following resources.
http://www.ppiaf.org/page/knowledge-center/toolkits

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ANNEXTURES

Annex 1: International Examples of Bid Selection Criteria

Annex 3: Request for Proposal (RFP): Sample Table of Contents

TABLE OF CONTENTS

1. Introduction
   1.1. Background
   1.2. Brief description of the bidding process
   1.3. Schedule of the bidding process
2. Instructions to Bidders
   2.1. General
      2.1.1. General terms of bidding
      2.1.2. Change in composition of bidding consortium
      2.1.3. Change in ownership
      2.1.4. Cost of bidding
      2.1.5. Site visit and verification of information
      2.1.6. Right to accept or reject any or all bids
   2.2. Documents
      2.2.1. Contents of the RFP
      2.2.2. Clarifications
      2.2.3. Amendment of RFP
   2.3. Preparation and submission of bids
      2.3.1. Format and signing of bids
      2.3.2. Sealing and marking of bids
      2.3.3. Bid due date
      2.3.4. Late bids
      2.3.5. Contents of the bid
      2.3.6. Modification/ substitution/ withdrawal of bids
      2.3.7. Rejection of bids
      2.3.8. Validity of bids
      2.3.9. Confidentiality
      2.3.10. Correspondence with bidders
   2.4. Bid security
3. Evaluation of bids
   3.1. Opening and evaluation criteria of bids
   3.2. Tests of responsiveness
   3.3. Selection of bidder
   3.4. Contacts during bid evaluation

4. Fraud and corrupt practices
5. Pre-Bid conference
6. Miscellaneous
7. Appendices
   - 7.1. Letter Comprising the bids
   - 7.2. Bank Guarantee for bid security
   - 7.3. Power of Attorney for signing of bid
   - 7.4. Power of Attorney for lead member of consortium
   - 7.5. Guidelines of the Disinvestment

Source: Model Request for Proposal document issued by the Ministry of Finance, Government of India

Annex 4: Concession Agreement - Sample Table of Contents

Concession Agreement
Table of Contents
Model Concession Agreement for National Highways in India

Part I: Preliminary
1. Recitals
2. Definitions

Part II: The Concession
3. Scope of the Project
4. Grant of Concession
5. Conditions Precedent
6. Obligations of the Concessionaire
7. Obligations of the Authority
8. Representations and Warranties
9. Disclaimer

Part III: Development and Operations
10. Performance Security
11. Right of Way
12. Utilities, Associated Roads and Trees
13. Construction of the Project Highway
14. Monitoring of Construction
15. Completion Certificate
16. Entry into Commercial Service
17. Change of Scope
18. Operations and Maintenance
19. Safety Requirement
20. Monitoring of Operations and Maintenance
21. Traffic Regulation
22. Emergency Medical Aid
23. Traffic Census and Sampling
24. Independent Engineer

Part IV: Financial Covenants
25. Financial Close
26. Grant/ (or Premium)
27. Concession Fee
28. User Fee
29. Revenue Shortfall Loan
30. Effect of Variations in Traffic Growth
31. Construction of Additional Toll way

32. Escrow Account
33. Insurance
34. Accounts and Audit

Part V: Force Majeure and Termination
35. Force Majeure
36. Compensation for Breach of Agreement
37. Suspension of Concessionaire's Rights
38. Termination
39. Divestment of Rights and Interest
40. Defects Liability and Termination

Part VI: Other Provisions
41. Assignment and charges
42. Change in Law
43. Liability and Indemnity
44. Rights and Title over Site
45. Dispute Resolution
46. Disclosure
47. Redress of Public Grievance
48. Miscellaneous

Annex 5: Preliminary Project Assessment Form

S/N	**Particular**	**Details (To be filled in by the MDA)1**
1	Project Name	Provide name f the project
2	MDA name	Provide the name of the MDA acting as the procuring entity
3	Brief description of the project	Provide a description of the project including location, capacity, size etc.
4	Project being implemente d under	Provide the Line Ministry under which the project is implemented
5	Objective of the project and expected outcomes	The objective for pursuing this project and the outcomes expected are to be provided here
1.	Technical feasibility	The MDA's preliminary view on the technical feasibility of the project. Successful precedent of similar projects may be included here
6	Legal framework	The MDA's view on the legal framework for the implementation of the project
2.	Project impact and suitability	The MDA's preliminary view on the likely impact of the project on the environment and community, as well as social acceptability and public benefits of the project. Long-term impact on the goals and position of the MDA. Please add more details as an annexure to this form.
3.	Brief description of social and community requirement	Please add more details as an annexure to this form
4.	Estimated capital expenditur	This should be a preliminary estimate and need not be a detailed calculation.
5.	Estimated O&M expenditure over the	This should be a preliminary estimate and need not be a detailed calculation. The projected O&M expenditure over the asset life should be discounted to arrive at the present value.
6.	Estimated investment	Summation of Capital Expenditure and Present Value of O&M Expenditure
7	Revenue generating potential	State the various sources of revenues for this project. If available, also include the preliminary annual expected revenues

8	Proposed means of financing	State the various proposed means of financing the project, indicative

Source	**Proportion (%)**	**Amount (Naira**
Private Sector		
MDA		
Cross River State		
Any other (Specify)		
Total		

9	Estimated project IRR (Internal Rate of	If estimation of returns is very difficult at this stage then, do not include at this stage.

S/N	**Particular**	**Details (To be filled in by the MDA)1**
10	Key risks Envisaged	The key risks identified for this project should be provided under this section.
11	Does the preliminary assessment show that the project is	Reasons and necessity for involving Private Sector in the Project and analysis of suitability of alternative models of project delivery. Roles of MDA and Private Sector.
12	Estimated project development expenses (Naira)	

Signature and seal
Name of the authorized signatory:
Designation of authorized signatory:
Name of MDA:

Date:

Annex 6: Sample Template for Options Analysis

Sr. No	Section	Description
1.	Executive Summary	The section should provide a summary of the findings of the options analysis. Sufficient information should be included to allow key decision- makers to understand the issues and the rationale for the selected short- listed options. Necessary clarification of the implications of the proposed initiative should
2	Description of service	This section provides a description of service requirements.
3	Project functions, objectives and	This section provides a description of the Project functions, objectives and critical success factors.
4	Alignment with strategic	This section provides a description of the strategic objectives of the parties.
5	Stakeholder identification	This section provides a description of the stakeholders involved.
6	Options Analysis	The range of feasible possibilities should be considered. A qualitative description of the advantages and disadvantages may be used to assist in evaluating the options. For major project proposals, risk-adjusted estimates (of revenue, costs, duration and benefits) need to be applied to address project characteristics, level of knowledge and degree of confidence in the estimates. In completing the template, the following criteria must be considered: Options would generally include: Base Case (do nothing) minimal approach non-asset solutions. For example, these may include: demand management, service transformation, optimising existing operations or asset use, alternative maintenance strategies, re-investment in replacement/renewal, enhancement of existing infrastructure investment in new assets. Public Procurement Option and PPP Option. The evaluation of options would include: rating of achievement of project objectives; rating of achievement of strategic objectives; capital cost (present value) (including confidence levels); recurrent costs (including confidence levels); potential revenues (including confidence levels); environmental benefits; social benefits and where these benefits are distributed, key assumptions and risk matrix; timing of service delivery and the results associated, should the project not proceed.

7	Project Delivery Alternatives	For each of the above proposal options, all appropriate project procurement delivery approaches should be considered. These may range from traditional public procurement to design-construct or PPP Project procurement delivery, depending on the nature of the investment proposal
8	Preliminary Risk Assessment	For each option, a high-level analysis of potential risks is required to estimate their likelihood and consequences and determine the risk level. These highest-ranking risks should be listed in the options Risk Matrix assessment along with potential cost implications, responsibility for/sharing of individual risks
9	Preferred Option	Based on the options analysis and the preliminary risk assessment, a prioritized short-listing of options and any clear preferred option for further analysis is provided. Reasons for the preferred option or prioritized short-listing should be documented, including key assumptions made, the details of the ranking process and the assessment criteria. The preferred
10	Actions to progress to business case	Actions required to further progress the proposal should be listed. These may include: further iterations of the options analysis; determining the impacts of deferring the project; issues to be specifically addressed in the business case; timeframe required to develop the outline business case and further the full
11	Supporting Documents	All documentation that supports the finding of the options analysis.

Annex 7: Sample Table of Contents for the Outline Business Case

Executive Summary
This summary provides the following information: a) Current service provision, if applicable and future requirements; b) A summary of the full list of options; c) A summary of the options selection procedure and the options chosen for detailed examination; d) A summary of the comparative findings and justification for the preferred option; and e) Highlights of the implement plan
Part A: Feasibility Assessment
1) Project Background This section provides a background on the project location, type of infrastructure, the MDA, previous studies undertaken, and previous approvals received etc
2) Strategic Needs Assessment, Demand Assessment and Project Scoping This section analyses current and future needs. An analysis of the user's needs is included. The following issues are addressed a) Existing or envisioned service gaps; b) Key stakeholders and their requirements; and c) Consultation plan with key stakeholders to ensure that the project remains relevant. Assessment of demand is also included in this section. Project scoping Component

Annex 8: Sample Checklists

Feasibility Study Checklist	**Particulars (Tick "√" the appropriate box)**	**Provided**	**Not Provided**	**Not Applicable**
1	General			
1.1	Name of project			
1.2	Type of PPP (BOT, BOOT etc.)			
1.3	Location (Province/District/Town)			
1.4	Responsible Ministry/Department			
2	Project Description			
2.1	Brief Description of the Project			
2.2	Justification for the Project			
2.3	Possible alternatives, if any			
2.4	Estimated capital costs with break-up under major heads of expenditure also indicate the basis of cost estimated			
2.5	Phasing of investment (if required)			

3	Financing Arrangement			
3.1	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions			
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions			
3.3	Indicate the Net Present Value (NPV) of revenue streams with appropriate discounting			
3.4	Who will fix the tariff/user charges? Please specify in detail			
3.5	Have any financial institutions been approached? If yes, their response may be indicated			
4	IRR			
4.1	Economic ORR (if computed)			
4.2	Financial IRR (project and equity), indicatin			
5	Clearances			
5.1	Status of environment clearances			
5.2	Clearance required from the MDA and			
5.3	Other support required from MDA			
6	Federal and/or State Government			
6.1	Viability Gap Funding/capital grant or availability payment support id required			
	Federal Government of Nigeria guarantees b			
7	Concession Agreement			

7.1	Heads of Terms of the proposed			
8	Criteria for short listing at RFQ			
8.2	Indicate the criteria for shot listing			

Concession Agreement Checklist

SN	Particulars (Tick "? " the applicable box)	Provided	Not Provided	Not Applicable
1	General			
1.1	Scope of the Project			
1.2	Nature of Concession to be granted			
1.3	Period of Concession and justification for fixing the period			
1.4	Estimated capital cost			
1.5	Likely construction period			
1.6	Conditions precedent, if any, for the concession to be effective			
1.7	Status of land acquisition			
2	Construction and O&M			
2.1	Monitoring of construction; whether an independent agency/engineer is contemplated			
2.2	Minimum standards of Operation and Maintenance			
2.3	Penalties for violation of prescribed O&M standards or incentives for better performance			
2.4	Safety related provisions			
2.5	Environment related provisions			
3	Financial			
3.1	Maximum period for achieving			
3.2	Nature and extent of capital grant/VGF/availability payments contemplated			
3.3	Bidding parameter (capital grant VGF/availability payment or other parameter)			
3.4	Provisions for change of scope and the financial burden thereof			

3.5	Concession fee, if any, payable by the Concessionaire			
3.6	User charges to be collected by the Concessionaire or paid by government			
3.7	Indicate how the user charge is to be determined; the legal provisions in support of user charge; and the extent and nature of indexation for inflation			
3.8	Provisions, if any, for mitigating the risk of lower revenue collection			
3.9	Provisions relating to escrow			
3.1	Provisions relating to insurance			
3.11	Provisions relating to audit and certification of claims, use and responsibilities of an Independent Engineer			
3.12	Provisions relating to assignment/substitution rights relating to lenders Direct Agreement			
3.13	Provisions relating to change in law			
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry			
3.15	Contingent liabilities of the MDA			
3.15a	Maximum Termination Payment for the MDA's default			
3.15b	Maximum Termination Payment for Private Sector default			
3.15c	Specify any other penalty, compensation or payment contemplated under the agreement			
4	Others			
4.1	Provisions relating to competing			
4.2	Specify the proposed Dispute Resolution Mechanism			
4.3	Specify the proposed governing law			

Commercial Case Checklist

SN	Particulars (Tick "? " the applicable box)	Yes	No	Unsure
1	Is the project expected to achieve a satisfactory rate of return?			
	Explanatory Notes			
2	Are projected financing ratios satisfactory?			
	Explanatory Notes			
3	Is the project likely to achieve Value-for-money (VFM)?			
	Explanatory Notes			
4	Are the project outputs, services levels and performance requirements clearly specified?			
	Explanatory Notes			
5	Are credible proposed financing arrangements in place?			
	Explanatory Notes			

SN	Particulars (Tick "? " the applicable box)	Yes	No	Unsure
1	Is a robust procurement strategy in place, including for the management of deviations?			
	Explanatory Notes			
2	Has the proposed procurement procedure been evaluated and, in particular, its compliance with legal requirements confirmed?			
	Explanatory Notes			
3	Has stakeholder consultation confirmed the acceptability of the project and procurement strategy?			
	Explanatory Notes			
4	Is there adequate knowledge of the market and potential suppliers/operators?			

	Explanatory Notes			
5	Is progress in obtaining permits, approvals and clearances satisfactory and in accordance with the procurement strategy?			
	Explanatory Notes			

Procurement Plan Checklist

SN	Particulars (Tick "? " the applicable box)	Yes	No	Unsure
1	Are the project budget and timetable under control?			
	Explanatory Notes			
2	Does the project team have adequate skills and resources, including appropriate external advisors?			
	Explanatory Notes			
3	Have remaining project activities been timetabled, defined and resourced?			
	Explanatory Notes			

Capacity of the MDA Checklist

SN	Particulars (Tick "? " the applicable box)	Yes	No	Unsure
1	Has a suitable Contract Management Team been formed?			
	Explanatory Notes			
2	Have financial resources been secured for managing and monitoring the contract during the current budgetary cycle?			
	Explanatory Notes			

3	Has a contract management plan been prepared?			
	Explanatory Notes			
4	Do the plans for contract management and monitoring meet the guiding principles for contract management (simple and focused, low cost, conducive to partnership, clear dispute resolution procedures)?			
	Explanatory Notes			
5	Has a monitoring schedule been developed?			
	Explanatory Notes			
6	Are training and capacity building opportunities available to the contract management personnel?			
	Explanatory Notes			
7				
	Explanatory Notes			

Annex 9: Government Financial Support Examples

Country	Key Instruments of Government Support	Description
South Africa		Capital grant provided to ensure reasonable returns
	Unitary Payment Mechanism	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
Chile	Construction S/Capital Grant	Competitively bid capital grant, provided mainly to ensure that highway tolls are at reasonable levels
	Minimum Revenue Guarantee	Guarantee by government to compensate a concessionaire for actual traffic being less than projected traffic
	Operational Grant /availability payments	Grant provided during the operation phase of a project; primarily routed from the surpluses generated from other profitable projects and passed on to less viable highway projects
European Union	Project Grant (Used as construction grant for PPP projects)	Grants from structural and cohesion funds; the grants are used by member-states to provide construction grants to PPP projects
India	Viability Gap Financing Grant	Competitively bid capital payment, specifically to enhance the viability of PPP projects
	Grants from Central Road Fund (used as construction grant on highway BOT projects)	Allocations from the Central Road Fund (fund generated by the levy of fuel cess) for national highways and used to enhance the viability of highway BOT projects
South Korea	Construction Grant	Capital grant provided to ensure reasonable returns and reasonable tolls or given as compensation to a concessionaire for large fluctuations in currency exchange rates
	Minimum Revenue Guarantee	Guarantee by government to compensate a concessionaire for actual traffic being less than projected traffic
	Build Transfer Lease Scheme	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
	Infrastructure Credit Guarantee	Guarantee by a statutory entity in favour of infrastructure SPVs borrowing funds from financial institutions
UK	Unitary Payment Mechanism	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
	PFI Credit Mechanism	Mechanism of supporting capital expenditure in projects implemented at local levels
	Construction Grant	Capital grant provided for specific projects, only for exceptional circumstances
	DBFO Programme of Highways Agency	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through shadow tolls/availability payments

Annex 10: Key Financial Indicators

Financial Ratio	Formula	Definitions and Notes
Capital Structure Ratio (CSR)	Equity + Quasi-equity) ÷ Financial Capital	Provide a ratio of equity to all the financial resources invested and is laced under the company's control be the capital provided
Debt-EquityRatio (DER)	Total Long-term Liabilities ÷ (Equity + Quasi-equity)	Indicates the proportion of the fixed assets of the project which is funded by owners' funds and the proportion of fixed assets which is funded by borrowed funds. Long-term liabilities include all liabilities such as loans and debts that the sponsor raises.
Annual Debt Service Coverage Ratio (ADSCR)	Available cash flow for servicing the debt (Profit After Tax (PAT) + Interest+ Depreciation) ÷ Annual debt service (Interest + Principal repayment installment)	Calculated each year and therefore provides a continuous view of a project's ability to service its debt. Provides a measure of the surplus free cash flows available after meeting all the operating expenses to service the debt. The DER for funding a project would always be capped by the ADSCR requirement of the lenders.
Net Present Value Debt Cover Ratio (NPV CDR)	NPV of cash flow available for servicing the debt over the loan life ÷ Outstanding debt	Also called Loan Life Cover Ratio. Is a commonly preferred practice in financial analysis. The discounted value is preferred to the average value because the time value of money is taken into account. The discount rate used in calculating the NPV is the minimum return expectation for the given risk profile of the project.
Project life cover ratio	Cash flow available to service debt over the project life ÷ outstanding debt	Used by lenders as it indicates strength of cash flow available over the project life.

Internal Rate of Return (IRR)	Discount rate required to receive an NPV of 0	Based on the discounted cash flow method. Rate of discount that equates the present value of future cash benefits (cash inflows) to the present value of capital cost over the economic life of the project (cash outflows).
Return on Capital Employed (ROCE)	Earnings before Interest and Taxes (EBIT) ÷ Capital Employed (Long-Term Liabilities + Shareholders' Equity)	Provides a measure of the returns generated by a project on the capital invested in it on a year-on-year basis.
Return on Equity (ROE)	Profit after Tax (PAT) ÷ Shareholders' Equity	Provides a measure of the returns generated by a project on the equity invested in it on a year-on-year basis.
Operating Profit Margin (EBITDA Margin)	Operating Profit ÷ Sales	Provides the measure of the operating profit as a percentage of sales. The operating profit margin is the best ratio for comparison of investments as it is independent of the capital structure of the investments and helps investors to base their decisions purely on the operating performance of the investments.
Net Profit Margin (PAT Margin)	Profit after Tax (PAT) ÷ Sales	Provides the measure of PAT as a percentage of sales.

Annex 11: Project Participation Agreements

Pre-development Agreements

Pre-development agreements are usually entered into by two or more companies that have agreed to undertake a feasibility study and other early development activities in relation to a proposed project. As the arrangements between the parties may not be sufficiently developed to warrant a formal shareholders' agreement, this document can conveniently deal with such matters as initial decision-making and allocation of tasks in relation to investigating a particular project or proposal. Typically, the agreement would be for a limited duration and would be quite specific about the scope of the proposed arrangements and the terms upon which a party could withdraw from the arrangements. It would also deal with appointment of advisors; cost sharing, confidentiality and restrictions on competing against one another, among other things.

Construction Guarantees

Governments, lenders, and/or investors may require private sponsors to guarantee project completion (i.e. guarantee that the construction would be completed in a specified amount of time). A purpose of this guarantee is to shift the completion risk to the private sponsor and avoid cost overruns / delays being used as renegotiation tools by private sponsors. It also allows the lenders to avoid having to conduct a costly and time-consuming due diligence exercise on the construction plans of the project.

The Construction Guarantee can take several forms, such as requiring (i) the private sponsor to pay a fixed sum of money to the lenders in case construction is not completed within the committed time and/or (ii) the private sponsor to provide a letter of credit / construction bond from a bank.

In a PPP contract this requirement is an integral part of the contract and no separate guarantee is required. The construction sub-contract passes this requirement down to the construction contractor.

Shareholders Agreement/ Joint Venture Agreement

For projects that are implemented through an SPV with two or more investors, these parties usually regulate the relationship between them by entering into a Shareholders Agreement (also called a Joint Venture Agreement). A Shareholders Agreement deals with items such as:

- Establishment of a PPP Company (SPV);
- Injection of share capital;
- Funding of the PPP Company;
- Voting requirements for particular matters;
- Resolution of disputes;
- Dividends policy;
- Management of PPP Company; and
- Disposal of shares and pre-emption rights.

Shareholders Support Agreement

In some cases, the shareholders enter into a support agreement with the PPP Company itself to perform certain services, sometimes at the request of lenders or government. This Shareholders Support Agreement contains a number of commitments that are required from the shareholders with respect to the project development, such as:

- Provide PPP Company management and technical assistance;
- Secondment of shareholder employees for a limited basis;
- Materials and other assets to be provided;
- Short-term loans, bridge financing, guarantees, and other short-term financial support

Shareholders are often paid in cash or through equity for these services.

Concession Agreement

The Concession Agreement deals with the detailed terms and conditions on which the project is awarded and broadly covers:

- Scope of Work
- Period of Contract
- Construction period
- Parameters on which contract is to be granted obligations of the PPP service provider and sponsoring authority
- Process of handing over of site to PPP service provider
- Monitoring and supervision details
- Safety and environmental requirements
- Support and incentives to be given by the sponsoring authority
- Operations & Maintenance requirements
- Force majeure and Termination payment arrangements
- Dispute resolution mechanism, and
- Other terms and conditions relevant to the project.

Construction Contract

The Construction Contract covers the construction works to be performed to build and/or rehabilitate the PPP project. It is normally a fixed price time certain contract. These works may be performed by a third-party construction company or one of the project sponsors, if they have the required corporate expertise and resources.

Operating & Maintenance Contract

The O&M contract covers the operations and maintenance services to be provided and the minimum service performance standards with the backup incentive or penalty system for service performance standards above or below these minimum standards. It also includes the agreed assets life cycle replacement requirements.

Financial Agreements

1. Equity Support Agreement

Governments and/or investors have an interest in ensuring that the private project sponsors inject the equity they have committed. This is typically done through an Equity Support Agreement, also called an Equity Subscription Agreement, which is provided to lenders. In this agreement, the sponsors will agree to inject equity - in the form of share capital or subordinated loans or combination of both – at a specific time, which in turn becomes part of the sponsor's financial plan and the lenders' base case financial model.

2. Comfort Letters

Comfort Letters can also be supplied between parties to add assurance that a contracting party will fulfill its obligations. For example, a parent corporation may provide a Comfort Letter on behalf of its subsidiary with the necessary resources to fulfill the contract if questioned by government or lenders. For PPP projects, often a government provides a Comfort Letter to potential private project sponsors that certain actions / obligations will be fulfilled by certain deadlines. It is important for all the parties to be clear on the extent to which a comfort letter is intended to be legally binding at the outset.

Project Loan Agreement

The Project Loan Agreement is entered into between the borrower (i.e. PPP Company in a project finance arrangement) and the project lenders. It regulates the terms and conditions upon which the project loans are drawn down and line items of the project expenditure which may be funded by these the loans, together with the minimum debt reserves and banking ratios required. The agreement contains the usual provisions relating to representations, covenants, and events of default found in other syndicated loan agreements. The provisions relating to repayment of principle and interest are also present with the provision for the capitalization of interest during the construction period or until project revenues come on stream. Subordinated loans, such as mezzanine financing, will also have their own Project Loan Agreements.

Lenders' Direct Agreement

This agreement is normally between the government project sponsor and the lenders, although sometimes the SPV is included, which sets out the procedure if the project runs into trouble, and there is a danger that the PPP contract will be cancelled, which will mean that the cash flow will terminate and with it the lenders main security for repayment of the debt. In this event it gives the lenders the right, but not the obligation, to step into the shoes of the SPV, take over the project and take the necessary action to rescue the project. This arrangement is also of benefit to the Government, as the lenders may assist the Government in rescuing the project, so that it is not necessary to cancel the PPP contract; although there may be a need to change the SPV management, the construction contractor or the O&M contractor.

Annex 12: Draft Code of Conduct for Bid Evaluation Panel Members

This code of conduct shall be applicable for both the selection of a transaction advisor and PPP procurement phase bid evaluation.

Background

Every member of a bid evaluation panel appointed by an MDA to act on behalf of the State in the adjudication and evaluation of these bids is required to sign this code of conduct before receiving bids. In addition, each member has to sign the attached declaration of interest form
once the MDA has announced and recorded the identities of the bidding parties.
This code of conduct does not address every possible situation that may arise. It also cannot serve as a substitute for the responsibility of the accounting officer/authority and the bid evaluation panel members to:

- Exercise sound judgment;
- Act with exceptional standards of moral integrity;;
- Abide by all applicable laws.

This code of conduct is intended to:

- Confirm the member's commitment to all its prescripts;
- Guide members who are faced with ethical dilemmas in an increasingly complex operational environment;
- Provide a reference for disciplinary and/or prosecuting procedures if a member is found guilty of fraud or corruption;
- Serve as a public commitment by the MDA to the highest standards of ethical and professional conduct in the evaluation of bids.

Breaching the Code

A member will be found guilty of breaching the code of conduct if he or she:

- Contravenes or fails to comply with any provision in it;
- When declaring interests, wilfully gives incorrect or misleading details.

In these cases, a member will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution. The accounting officer/authority, acting on his or her own or on a complaint by any person, may investigate any alleged breach of this code by a member of an evaluation panel and may withdraw the member from the panel during the investigation.

Definitions

"**Family member**" means a parent, sibling, child or spouse of a member.
"**Member**" means a person appointed by the accounting officer/authority to a bid evaluation panel, either as the chairperson, or as an ordinary member or secretariat, for purposes of conducting the evaluation of either transaction advisor bids or PPP bids as a representative of the MDA.

"Privileged or confidential information" means any information:

- Determined by the MDA to be privileged or confidential;
- discussed in closed session by the bid evaluation panel;
- which if disclosed would violate a person's right to privacy;
- declared to be privileged, confidential or secret in terms of any law.

Code of Conduct

I, [insert name of member of bid evaluation panel], acting in my capacity as member of the [insert name of MDA] evaluation panel for the adjudication and evaluation of bids for transaction advisors/private parties (delete which is not applicable) under [insert tender number] hereby undertake:

1. To act always with fidelity, honesty, integrity and in the best interests of the state and the general public it serves.
2. To diligently perform the duties of a member efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the bid documentation and according to all relevant instructions given by the MDA.
3. To properly prepare for, and attend each meeting of, the bid evaluation panel and failing this to withdraw as a member.
4. To act at all times in accordance with the relevant legislation and regulations, including regulations, and directives given by the MDA.
5. To recognize the public's right to access to information in the interests of administrative justice.
6. To take the utmost care in ensuring that there is reasonable protection of the records of the MDA and all bid documentation.
7. Not to misuse the position or privileges of a member or privileged or confidential information obtained as a member.
8. To carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgment.
9. Not to unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language.
10. Not to abuse any position in the public service to promote or prejudice the interest of any political party or interest group.
11. To give the state auditor-general all the information and explanations it requires to carry out its functions.
12. To report to the appropriate authorities any case of fraud, corruption, nepotism, maladministration and any other acts which constitute an offence, or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings.
13. To declare, diligently, accurately and honestly in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder, and to willingly abide by any decision of the chairperson of the bid evaluation panel or the accounting officer/authority to withdraw as a member of the panel because of this to be open and honest about all decisions and actions taken regarding the bid evaluation, and to give clear reasons for these, which can be accurately recorded.
14. Not to make any dishonest allegations about any bidder.
15. Not to make any false or misleading entries into the records of the bid evaluation panel.
16. To make no contractual commitments related to the bid, to any bidding party, on behalf of the MDA.

17. To proactively protect privileged or confidential information of the bid evaluation panel from theft, unauthorized disclosure or inappropriate use, and specifically:
    - Not to respond to any queries relating to the bid evaluation on behalf of the MDA, unless expressly authorized in writing by the accounting officer/authority to do so;
    - Not to speak to or correspond carelessly with any person (fellow member, colleague, friend, family member or otherwise) on any matter related to the bid evaluation.
18. Not to request, solicit or accept any reward, gift or favour in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information.
19. Not to accept or agree later to accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing my evaluation of the bids.
20. To disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids.
21. To report to the chairperson of the panel any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid evaluation.
22. Not to vote at, attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my member functions in a fair, unbiased and proper way in accordance with this code of conduct.
23. That, the breach of this code of conduct shall not preclude the MDA of criminal proceedings pursuant to the relevant laws and regulations in Cross River State.

Signed: _____ Date:_____

[Signature of member] [Insert date]

Annex 13: PPP Project Case Studies (Nigeria)

Project Name:	Domestic Terminal at Murtala Muhammed Airport, Lagos
Country:	Nigeria
Sector:	Transportation
Sub-sector:	Airports
Type of PPP:	Concession/BOT
Status:	Operations
Project Concept:	Following the destruction of the domestic terminal in a fire in 2000, the project involves the design, construction, and operation of a new domestic terminal and ancillary facilities at the Murtala Muhammed Airport in Lagos. The new terminal, Murtala Muhammed Airport Two (MMA2), has a land area of 20,000m^2 and comprises a terminal building, a multi-storey car park, and an apron.
Procurement Details:	In 2003, the Ministry of Aviation advertised for bids for the project. Among the bidders were Royal Sanderton Ventures Limited and Bi-Courtney Limited. Initially, Sanderton was awarded the contract. However, after no significant construction had started six months into the contract signing, the government decided to revoke Sanderton's mandate and award the contract to Bi-Courtney following direct negotiations with the company. The contract was awarded for a period of 12 years and subsequently extended to 36 years. The Nigerian contracting entities are the Federal Government, represented by the Minister of Aviation, and Federal Airports Authority of Nigeria (FAAN), the Nigerian Airports Authority.
PPP Company:	Bi-Courtney Limited, a Nigerian firm, is the parent company of Bi-Courtney Aviation Services Limited.
Project Funding:	The estimated cost of the project was US$200m for investments in physical assets. The project was part-financed with a loan of US$150m from a consortium of six banks -- Oceanic Bank

Other Stakeholders:	n/a
Project Outcome:	MMA2 is the first major BOT infrastructure project to be completed by a Nigerian company. While the airport has been in operation since 2007, the project has encountered various difficulties. These include: (i) after being awarded the contract, Bi-Courtney faced significant challenges in securing financing and had to start construction without a long-term financing agreement in place. The company proceeded with the project with support from Oceanic Bank International Plc. It was only in March 2007 that it secured a US$150m part- financing from a consortium of six banks for the completion of MMA2; (ii) on the
Key Lessons Learned	Key lessons include: (i) the importance of having an agreed financial model and long term financing in place at the outset of the project; (ii) the initial bidding process also points to the importance of managing politicians' expectations and setting realistic goals regarding timelines; (iii) revoking a contract and re- awarding it to a different company not only delayed the project but also triggered doubts in private participants' minds about whether such changes were spurred by political rather than economic issues; (iv) the difficulty of enforcing contractual agreements in some developing countries where institutions are competing interests (e.g. while the contract has a clause assuring that all scheduled domestic flights in and out of FAAN's airports in Cross River shall operate from the new terminal during the concession period, FAAN continues to operate the old domestic terminal (GAT); and (v) any conflict of interest faced by the Government puts significant pressures on the ability of the private sponsor to recover its investments and thus placed the financial viability of the project at risk.

Project Name:	Lekki Toll Road Concession Project, Lagos Area
Country:	Nigeria
Sector:	Transportation
Sub-sector:	Roads
Type of PPP:	Concession/BOT
Status:	Construction
Project Concept:	The project is proposed to be implemented in two phases. Phase I involves upgrading and maintenance of approximately 50 km of the Lekki-Epe Expressway on a BOT basis. The concession period for Phase I is 30 years.
Procurement Details:	The Concession was awarded to Lekki Concession Company

PPP Company:	Lekki Concession Company Limited ("LCC") is an SPV formed by the ARM Group of Companies for the execution of this project.
Project Funding:	The project cost was funded, using a mix of debt and equity with some support from the State and the Federal Government of Nigeria. The various sources of funding included DFI soft loans, Federal Government loans/grants, and private sector finance. The major shareholders in the project include Macquarie Bank and Old Mutual of South Africa through the African Infrastructure Investment Fund. The project was able
Other Stakeholders:	n/a
Project Outcome:	The UN has forecast a population of 20 million in 2020 for the Lagos State. Given the population of the state, it is estimated that approximately one million motor vehicles are stationed in Lagos today with a daily traffic flow between the Lagos Mainland and the Lagos Island of about 5,000,000 vehicles. The poor condition of the roads in Lagos, characterized by crumbling sidewalks, badly pot-holed road surfaces, non-functional traffic lights, poor signage, and blocked or non-existent drainage systems lead to
Key Lessons Learned	Lessons learned to date include: (i) The importance of stakeholder consultation in the early phases of the project (during feasibility study) as during the construction phase, communities living along the Lekki-Epe corridor began to protest about having to pay tolls and, as a result, tolling was suspended; (ii) The need for a strong contract management function within the Government team; and (iii) The importance of managing public and investor perceptions during project implementation, as the project has been delayed resulting in commuter frustration with the perceived lack of progress. (iv)

PPP Case Studies (Worldwide)

Project Name:	Panagarh-Palsit Highway Project
Country:	India
Sector:	Transportation
Sub-sector:	Roads
Type of PPP:	Concession/BOT
Status:	Operational

Project Concept:	The project involves the design, construction, operation and maintenance of a 63km four-lane carriageway between Panaragh and Palsit, which forms part of the Delhi-Kolkata section of the 'Golden Quadrilateral Project' (main highway links between the major cities of India).
Procurement Details:	Initially, the National Highways Authority of India (NHAI) shortlisted six bids from a mix of international and domestic companies – Larsen & Toubro, Kvaerner Construction, Road Builder, IJM Berhard Corp, Reliance Industries, and Gamuda-WCT. The bid criterion was the lowest annuity amount that would be paid semi-annually by the NHAI to the private sponsor. However, the NHAI found the annuity amount quoted by the lowest bidder to be too high and decided to call for fresh bids from all six parties in a second round of bidding. Only Larsen & Toubro, Road Builder, and Gamuda-WCT participated in the second round, which Gamuda-WCT won. The contract was awarded for a period of 15 years, and the agreement between NHAI and Gamuda-WCT was signed in November 2001.
PPP Company:	Gamuda-WCT is a joint venture between Gamuda (70%) and WCT (30%), two
Project Funding:	The project's estimated cost is US$69m. The financing package has a debt- equity ratio of 2:1. As the annuity payments are considered to be a secure and stable source of funding by the financial community, annuity-based models tend to be financed with higher debt-equity ratios compared to typical toll- based projects.
Other Stakeholders:	Infrastructure Development Finance Company (IDFC) acted as the financial advisor to NHAI. IDFC was established in 1997 as a specialised financial intermediary to lead private capital to commercially viable infrastructure projects in India.

Project Outcome	This was one of the first projects that were undertaken under the BOT-Annuity framework. The construction phase of the project was completed in June 2005, five months behind schedule. The delay was caused by land availability issues and finalization of change of scope orders. The Comptroller & Auditor General of India (CAG) report on BOT road projects undertaken by the NHAI had the following findings related to the Panagarh-Palsit section: (i) cracks and patch repairs were found to be less than 5% implying good maintenance; (ii) one hundred and thirty-two locations were test-checked for roughness with only one location's roughness within the "desirable" level (the rest were "acceptable" as per the Concession Agreement); (iii) deflection values in 10 out of 12 test- checked sections were more than the "acceptable" level stipulated in the Agreement, which indicates that the selected sections of the road are structurally weak and require overlay; and (iv) in two out of the five test- checked pits, the
Key Lessons Learned	Key lessons learned include: (i) revenue risks put significant uncertainty on the private sector's ability to recover its investments and may discourage participation in toll-based road PPPs, but an annuity method removes the revenue risks for the private sector and makes the deal more appealing to the private sponsor; (ii) the annuity payments reflect a transfer of revenue risk from the private sector to the government and if the government encounters difficulties in setting up toll charges, the annuity payments may put a strain on its budget; and (iii) considerable attention needs to be given to the way the PPP agreement is structured in order to make sure that the private participant is sufficiently incentivized to deliver the project on time (e.g. the Panagarh-Palsit Agreement did not stipulate target dates for individual project milestones and consequent penalty for non-achievement of milestones)

Project Name:	Cross-Harbor Tunnel, Hong Kong
Country:	China
Sector:	Transportation
Sub-sector:	Tunnel
Type of PPP:	Concession/BOT
Status:	Operational
Project Concept:	The project involved the construction, maintenance and operation of a tunnel connecting Kowloon to Hong Kong Island. The 1.9km Cross-Harbour Tunnel (CHT) was Hong Kong's first underwater tunnel and formed the first road connection between the Island .

Procurement Details:	The procurement was done via reverse tender whereby the bids were evaluated on the basis of the lowest public sector subsidy required. On the basis of this criterion, the Cross-Harbour Tunnel Company Limited was awarded the contract. The contract was awarded for a period of
PPP Company:	The company is a Hong Kong-based investment holding company with emphasis on transport infrastructures, such as tunnel operation, tunnel management, operation of driver training centres, and operation of electronic toll collection systems.
Project Funding:	The financing package had a debt-equity ratio of 64:36. Royalty payments amounted to 12.5% of operating receipts.
Other Stakeholders:	n/a
Project Outcome:	Construction work commenced in September 1969 and the tunnel became operational ahead of schedule in August 1972. It successfully reached the end of its 30-year concession period and its control was transferred to the government in 1999. Other outcomes include: (1) CHT is the first BOT project in Hong Kong that did not need to be re-negotiated and is widely considered to be a success story; (ii) despite facing competition from an effective and cheap ferry service, the tunnel proved to be very popular and began to make profits four years after its opening, and had repaid all debts by 1977; (iii) at the time of its construction, CHT was at the forefront of tunnel engineering as the harbour's deep waters made a conventional underground tunnel impractical, so engineers devised an estuarine tube tunnel that would sit on the sea bed and, at the time, was the longest immersed tube tunnel ever constructed; (iv) two more cross- harbour tunnels have been built since CHT became operational but CHT continues to be the most popular, with more than half the cross-harbour traffic passing through it; and (v) successful factors included that the private company had the necessary skills for undertaking the project, it
Key Lessons Learned	Lessons learned include: (i) the importance of strong political support for successful completion of a project and a major tunnel project involved massive effort by the government through the planning and implementation stages; (ii) the importance of structuring the PPP transaction in an appropriate way in order to attract capable private sponsors; (iii) the government can transfer much of the operating risk to the private company by choosing a central location for the tunnel and thus ensuring a steady flow of traffic; (iv) with the right project characteristics and a strong government counterpart agency the government does not necessarily have to provide direct guarantees to sweeten the deal for the private

Project Name:	Hamburg International Airport
Country:	Germany
Sector:	Transportation
Sub-sector:	Airport
Type of PPP:	Concession
Status:	Operational

Project Concept:	The project involved the construction of a new terminal with large commercially usable real estate, extension of parking areas, and establishment of connectivity of the Hamburg International Airport to the suburban rail network. The project is part of a country-wide initiative to support further development of airports by extending their capacities in all functions in line with the demand for overall airport services.
Procurement Details:	An EU-wide tender procedure was held and the contract was awarded, with the Senate of Hamburg's approval in July 2000, to a consortium Hamburg Airport Partners formed by Hochtief AirPort GmbH and Aer Rianta International GmbH, a subsidiary of the Irish airport operating company.
PPP Company:	Flughafen Hamburg GmbH (FHG) was the original company responsible for the operations of the Hamburg International Airport. FHG was originally owned by City State of Hamburg (64%), FRG (26%), and State of Schleswig- Holstein (10%). Post tendering, the private sector consortium formed by Hochtief AirPort GmbH and Aer Rianta International GmbH owns 40% stake in FHG and the remaining stake is owned by City State of Hamburg and other government agencies.
Project Funding:	The construction and the extension of the Hamburg International Airport required capital investment to the extent of €350m. This was funded by means of a 36% stake sale in FHG to the private sector consortium of Hochtief AirPort GmbH and Aer Rianta International GmbH for €296m and through a €220m loan support from EIB, received through a local bank.
Other Stakeholders:	The project received support from EIB in the form of a loan through a local bank of €220m.
Project Outcome:	The project is one of the first airport projects in Germany to be undertaken through the PPP route. The capacity augmentation of the Hamburg International Airport has provided quality airport infrastructure, solving the problem of capacity bottlenecks and resulting in higher revenues and increased profitability for all the stakeholders.

Key Lessons Learned	The Hamburg International Airport case shows that major PPP projects in airport construction can be successfully realized if the needs of all parties are integrated. Airports present particular environmental and social issues but these can be successfully addressed. The case shows that: • Compensations like advanced noise protecting programs or noise quota systems can be established contractually and financially integrated. • It is possible that private and business customers benefit from sophisticated contractual instruments like price-cap regulations. • A right of veto in cases of conflict, granted to each of the partners within the partnership agreement, acts as a central instrument of risk management strategy.

Project Name:	Point Lisas Desalination Plant
Country:	Trinidad and Tobago
Sector:	Water and Sanitation
Sub-sector:	Bulk Water Supply

Type of PPP:	Concession/BOO
Status:	Operational
Project Concept:	The project includes the financing, construction, and operation of an 110,000 m3/day capacity desalination plant to service the industrial park at Point Lisas on the west coast of Trinidad. Trinidad's Water and Sewerage Authority (WASA) is the sole purchaser of the treated water and on-sells to industries located in Point Lisas and pumps the excess into the potable supply.
Procurement Details:	In 1999, a selection committee acting on behalf of the Government awarded the contract for the plant to a joint venture named the Desalination Company of Trinidad and Tobago (Desalcott). The contract was awarded for a period of 20 years.
PPP Company:	Desalcott is a joint venture between the local company Hafeez Karamath Engineering Services Ltd. (60%) and Ionics Inc. (40%), a US-based company specialising in desalination, water reuse and recycling, and industrial ultrapure water services. Ionics was bought by General Electric (GE) in 2004.
Project Funding :	The estimated cost of the project is US$120m.

Other Stakeholders:	Initially, Desalcott attempted to raise financing for the project through the Overseas Private Investment Corporation (OPIC), a US government agency that helps US businesses invest overseas. Eventually, OPIC dropped out of the project as a result of the difficulties in securing government guarantees for the project.
Project Outcome:	The plant became fully operational in 2002 and was subsequently expanded in 2004. Water from this plant accounts for more than 10% of the total water production in the country and it is the largest seawater reverse osmosis system in the western hemisphere. The plant was originally designed for 50% overall recovery but by 2006, it was already operating at around 62% recovery with significantly lower-than-expected chemical consumption. The plant operates extremely reliably with an availability of over 95%. Despite the positive operational performance, public opinion of the desalination plant has been mixed. The water supply system in Trinidad is quite unreliable and even though the plant has made significant improvements in water supply to the industrial area, there is widespread conviction that WASA is giving foreign-owned companies preferential treatment at the expense of the general public. The project has also been subject to corruption allegations. The probe began in 2002 after the new Government promised an investigation into the contract which was entered into by the previous administration. It is claimed that the bid process was rigged and that payments to certain Trinidadian officials were made to make sure that Desalcott would be awarded the contract. In 2006, Desalcott's executive chairman Hafeez Karamath was arrested on fraud
Key Lessons Learned	Lessons learned include: (i) operational success does not necessarily guarantee public support, and that it may be beneficial to undertake an effective public relations campaign to inform the general public of the benefits of the project; (ii) implementing PPPs in developing countries' water sector may be particularly difficult as increasing water tariffs tends to be a highly political issue and the inability to increase tariffs may put a serious strain on the financial viability of the project; (iii) a government's reluctance to grant tariff increase sets a bad precedent in enforcing the overall rule of law in some developing countries; (iv) during the tender process, significant attention needs to be paid to the ability of the private sector to raise financing for the project; and (v) companies should not partake in corrupt practices to win a tender – it is never worth it in the long-run.

Project Name:	Tala Transmission Project
Country:	India
Sector:	Energy
Sub-sector:	Transmission
Type of PPP:	Concession/BOT
Status:	Operational

Project Concept:	The project is to build, operate and maintain five 400kV and one 220kV double circuit electricity transmission lines of approximately 1,200 km, with a maximum load capacity of about 3,000MW. The new transmission system has been undertaken to transmit power from the Tala Hydro Project in Bhutan and carry surplus electricity from North-Eastern India to the power-deficient Northern Indian belt.
Procurement Details:	As a result of an international competitive bidding process, Tata Power was awarded the contract. The only other pre-qualified bidder was National Grid of the UK. The contract was awarded for a period of 30 years, and reached financial closure in April 2004. The Indian contracting entity was the federal government.
PPP Company:	The project is undertaken by Tala-Delhi Transmission Limited (TDTL), a joint venture between Tata Power (owning 51% of TDTL) and the Government of India's Power Grid Corporation of India Limited (PGCIL) which owns 49% of TDTL. Tata Power's main line of business is the generation, transmission and distribution of electricity. It is the country's
Project Funding:	The estimated cost of the project is US$269m. The amount will be spent on investments in physical assets. The financing package consists of 30% equity and 70% debt. State Bank of India and IDFC provided term
Other Stakeholders:	The project received support from the IFC in the form of a US$75m loan. The Asian Development Bank also extended a US$62.24m private sector loan to the project.

Project Outcome:	The Tala transmission project is India's first inter-state transmission project undertaken via PPP. It is also the first BOT electricity transmission line outside Latin America and the Caribbean region. The construction phase was completed within schedule and the project has been operating commercially since September 2006. In its first year of operation, the transmission line was able to ensure exchange of about 3,500 million units of surplus energy from the eastern to the northern regions.

Key Lessons Learned	The Tala case highlights the importance of structuring the PPP transaction in an appropriate way so as to make the project more attractive for the private sector. In this particular example, interest from private parties was initially limited as the returns on the project were deemed too low due to the tariff structure adopted by PGCIL. As a result of a petition filed by National Grid, the Central Electricity Regulatory Commission (CERC) of India decided to allow private transmission players a 10% mark-up on equity over that offered to PGCIL, which raised the internal rate of return for the private participants by 4.5% on the Tala project. The Tala case also points to the importance of introducing risk mitigation measures in the PPP structure to secure private sector interest. More specifically, as state electricity boards in India have poor payment records, it was necessary for PGCIL to assure 100% payment to private sponsors for transmitting power to the state boards and making the project financially viable for the private sector. While the presence of a government-owned shareholder may make it easier to overcome bureaucratic hurdles, it may make private investors worry about the potential balance of power issues. In the Tala case, such concerns were mitigated by both the shareholding structure, which gave the majority stake to the private participant, and the way the management positions were nominated.

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